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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 1004/2016

SHANKAR KRISHNA MURTHY Petitioner

Through Petitioner in person

versus

ENABLE TECHNOLOGIES PVT LTD AND ORS..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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03.10.2016

1. By the present petition the petitioner seeks to impugn the order dated 11.08.2016 by which unconditional leave to defend was granted to the respondents in the present suit. The petitioner has filed the present summary suit under Order 37 CPC for recovery of Rs.15,51,702/-. As per the plaint the petitioner was employed by respondent No.1 on 1.4.2009 as an Executive Director. It is further averred that since April 2010 respondent No.1 started defaulting in payment of salaries. Subsequently, it is stated that four cheques were issued by the respondents in discharge of their alleged admitted and acknowledged liability. The present suit pertains to only cheque No.545556 dated 15.4.2013 for Rs.10,92,728/-. The grievance of the petitioner is that the trial court has vide the impugned order granted unconditional leave to defend to the defendant.
2. An advance copy of the petition has been sent to counsel for the respondent by speed post. However, none is present on his behalf.

3. At the outset the petitioner submits that he does not press his relief in the suit being prayer (v) i.e. “suo moto alert the Enforcement Directorate for investigations relating to hawala, holding of non declared foreign accounts, non-payment of tax on foreign income, violations of Prevention of Money Laundering Act, and FEMA”.

4. A perusal of the impugned order shows that the trial court came to a conclusion that reliefs sought are not covered under section 37 CPC. The court held that the petitioner has prayed for mandatory injunction against the respondent to provide TDS certificate. In addition, the petitioner has prayed for making an alert to the enforcement director for investigation relating to havala. The trial court hence concluded that these reliefs are not covered under Order 37 CPC.

5. Order 37 (1)(2) CPC reads as follows:-

“37(1) Courts and classes of suits to which the Order is to apply.-

(1).....

(2) Subject to the provisions of sub-rule (1), the order applies to the following classes of Suits, namely:

(a) suit upon bills of exchange, hundies and promissory notes;

(b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest arising-

(i) on a written contract; or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt(other than a penalty; or

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.”

6. A suit based on bills exchange, hundi of promissory notes are covered under Order 37(1)(2) CPC. A cheque is a bill of exchange as stated in Section 6 of the Negotiable Instruments Act. A suit for a cheque which has been returned unpaid would be covered under Order 37 CPC. The reasons as to why the trial court has come to a different conclusion cannot be concluded from the impugned order. Merely because some superfluous reliefs have been added would not deviate from the fact that the main relief sought is recovery of money on account of a cheque which has been returned unpaid.

7. In the light of the above, the impugned order dated 11.8.2016 is liable to be set aside. The trial court may adjudicate the said application for leave to defend afresh keeping in view the above observations of this court. Petition stands disposed of.

JAYANT NATH, J

OCTOBER 03, 2016

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