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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment dated 3rd October, 2016**

+ CS(OS) 1691/2015 & I.A.23513/2015

JOJO MATHEWS

..... Plaintiff

Through : Ms. Zaryab J. Rizvi, Ms. Firdouse
Qutb Wani and Mr. Ashutosh
Shandilya, Advocates

versus

HARMEET SINGH SOOD

..... Defendant

Through : None

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Plaintiff has filed the present suit under the provisions of Order XXXVII of the Code of Civil Procedure seeking recovery of Rs.2.52 crores together with *pendente lite* interest and costs. The suit is based on dishonor of five cheques.
2. As per the plaint, the plaintiff had entered into a Memorandum of Understanding (MOU) with the defendant on 08.02.2012 as per which a friendly loan was advanced by the plaintiff to the defendant in the sum of Rs.2.50 crores. The original MOU has been placed on record, as per which this MOU amount was to be repaid by 31.08.2012. Simultaneously, the defendant handed over five post-dated cheques to the plaintiff as detailed below:

Cheque No.	Dated	Amount (Rs.)	Drawn on
676667	31.08.2012	50,00,000/-	PNB E.O.K.N.D.
676668	31.08.2012	50,00,000/-	PNB E.O.K.N.D.
676669	31.08.2012	50,00,000/-	PNB E.O.K.N.D.
676670	31.08.2012	50,00,000/-	PNB E.O.K.N.D.
676671	31.08.2012	50,00,000/-	PNB E.O.K.N.D.

3. It is further stated that since the defendant was unable to keep up this settlement, a second MOU was executed on 03.09.2012. As per second MOU while acknowledging the receipt of Rs.2.50 crores, the defendant sought further time to repay the amount and also agreed to pay a sum of Rs.2.0 lakhs as penalty. The amount was to be returned on or before 15.09.2012. Counsel submits that since this amount was not returned despite repeated requests and reminders, the plaintiff was forced to file the present suit under the provisions of Order XXXVII of the Code of Civil Procedure.
4. Counsel submits that the summons were issued in the suit in the prescribed form on 29.05.2015. The defendant was unserved as he was not residing at the given address. The counsel submits that thereafter the defendant was served through publication in the 'Times of India' and 'Dainik Jagran'. Summons were also affixed at the last known address of the Defendant. Counsel submits that the defendant is purposely avoiding service. Thus, counsel prays that despite service, the defendant has failed to enter appearance as per Order XXXVII sub-Rule(2) of Rule 3 of the Code of Civil Procedure.
5. I have heard the learned counsel for the plaintiff. The present suit which has been filed under the provisions of Order XXXVII of the Code of Civil Procedure is based on five cheques. The original cheques have been filed on record. All the five cheques are in the name of the plaintiff and duly signed by the defendant. Original MOU dated 08.02.2015 has also been placed on record which details the five cheques which were handed over by the defendant to the plaintiff. The MOU also acknowledges receipt of payment. The plaintiff has also relied upon the second MOU dated 03.09.2012, original whereof has also been placed on record. Second MOU also acknowledges receipt of

Rs.2.50 crores and also acknowledges that this amount was to be paid upto 31.08.2012. As per the second MOU, the defendant had agreed to pay a sum of Rs.2.0 lakhs additionally as penalty.

6. Order XXXVII Rule 2 sub-Rule (3) of the Code of Civil Procedure reads as under:

“2. Institution of summary suits.-

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(3) The defendant shall not defend the suit referred to in sub-rule(1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.”

7. Order XXXVII Rule 2 sub-Rule 3 of the Code of Civil Procedure prescribes that the defendant would not defend the suit unless he enters appearance and in default of his entering appearance, the allegations made in the plaint are deemed to be admitted and the plaintiff is entitled to a decree. Along with the present suit, the plaintiff has filed the originals of both the MOUs and the five cheques which were handed over to him.
8. Since the present suit is based on both the MOU and the cheques, I am satisfied that a suit under Order XXXVII of the Code of Civil Procedure is maintainable.
9. Accordingly, the present suit is decreed in favour of the plaintiff and against the defendant in the sum of Rs.2.52 crores with *pendente lite* interest @ 10% per annum.
10. Decree sheet be drawn up accordingly.

11. I.A. 23513/2015 also stands disposed of.

G.S.SISTANI, J

OCTOBER 03, 2016

pst

