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

\+ CS(OS) 2718/2015

KULWANT KAUR

..... Plaintiff

Through: Mr. Gaurav Singh and Mr. Ravi Ranjan, Advocates

versus

SHARDA GEMS & JEWELS PVT LTD.

..... Defendant

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

<u>O R D E R</u>

% **04.03.2016**

Despite service, the defendants have not put in appearance. The present suit has been preferred by the plaintiff under Order 37 CPC. Accordingly, I proceed to judgment. The case of the plaintiff as disclosed in the plaint is that the defendant no.2, a family friend of the plaintiff, approached the plaintiff for financial help to avail a cash credit limit of Rs.2,38,22,000/- in respect of defendant no.1 of which he is a director, from Indian Overseas Bank. The plaintiff was requested to provide security and accordingly, the plaintiff mortgaged five shops with the bank in order to enable the defendants to avail of cash credit limit of Rs.2,38,22,000/-.

Defendant no.2 had assured the plaintiff that the said properties would be got released from the bank on or before 07.01.2012. However, the same was not done. Defendant no.2 had further undertaken if the property is not so released, the defendant would pay interest @ 18% p.a. on the aforesaid amount. However, the shops were not released. The defendant then entered into an agreement on 12.01.2015 once again undertaking and assuring the plaintiff that the title deeds of the three shops of the plaintiff would be got released by 15.03.2015 and the remaining two shops by 30.05.2015. The defendant also issued four post dated cheques aggregating to Rs.2,38,22,000/- drawn on the defendants bank. It was agreed that in case the properties are not released by the bank as per schedule agreed between the parties, the plaintiff would be entitled to present the cheques for payment.

The case of the plaintiff is that the properties were not got released by the defendants from their bank. Consequently, the cheques were deposited. One cheque of Rs.88 lacs was encashed, while the two other cheques of Rs.25,22,000/- and Rs.1,03,00,000/- were dishonoured upon presentation. Learned counsel for the petitioner states that the plaintiff has not made any averment regarding the fourth cheques for Rs.22 lacs in the plaint, as the dishonour of the said cheque took place after the filing of the suit. However, the present suit has been filed only in respect of dishonour of one cheque for Rs.1,03,00,000/-, which have been given in respect of plaintiff's shop no.G-5.

The plaintiff has placed on record a copy of the said cheque along with the dishonour memo issued by Vijaya Bank which shows that the payment of the said cheque was stopped by the drawer. The plaintiff has also initiated proceedings under section 138 of Negotiable Instruments Act after issuing statutory notice undated on 26.05.2015. Learned counsel for the petitioner submits that, consequently, the present suit may be decreed as prayed for.

Accordingly, the suit of the plaintiff is decreed for Rs.1,03,00,000/- along with interest @ 18% p.a. with effect from 16.05.2015 when the said cheque of Rs.1,03,00,000/- was dishonoured. The plaintiff shall be entitled to interest till the passing of decree and thereafter till realisation at the same rate.

VIPIN SANGHI, J

MARCH 04, 2016
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