

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9163 OF 2017

Sanjaykumar Suganchand Kasliwal,
Age : 48 years, Occu. Business,
R/o Plot No.13, Chintamani Colony,
Aurangabad

PETITIONER
(ORIG. DEFENDANT)

VERSUS

Assam Tea Company,
A Company registered under the
Companies Act, having its
office at Bhaishree Chambers,
Veer Sawarkar Chowk, Taluka
and District Jalna

RESPONDENT
(ORIG. PLAINTIFF)

AND

WRIT PETITION NO. 9165 OF 2017

Sanjaykumar Suganchand Kasliwal,
Age : 48 years, Occu. Business,
R/o Plot No.13, Chintamani Colony,
Aurangabad

PETITIONER
(ORIG. DEFENDANT)

VERSUS

Vikram Tea Processor Pvt.Ltd.,
A Company registered under the
Companies Act, having its
registered office at Borkhedi,
Taluka and Dist. Jalna, having
its office at "Bhaishree Chambers",
Veer Sawarkar Chowk, Taluka
and District Jalna, through its
Authorized Signatory
Shri Kishor Sarjerao Kahire

RESPONDENT
(ORIG. PLAINTIFF)

AND

WRIT PETITION NO. 9166 OF 2017

Sanjaykumar Suganchand Kasliwal,
Age : 48 years, Occu. Business,
R/o Plot No.13, Chintamani Colony,
Aurangabad

PETITIONER
(ORIG. DEFENDANT)

VERSUS

Beej Sheetal Research Pvt. Ltd.,
A Company registered under the
Companies Act, having its office
at Beej Sheetal Corner, Mantha Road,
Tq. and District Jalna, through
its Authorized Signatory
Shri Nilesh s/o Ramesh Agrawal

RESPONDENT
(ORIG. PLAINTIFF)

Mr. A.R. Vaidya, Advocate holding for Mr. A.S. Bajaj,
Advocate for the Petitioner in all Writ Petitions
Mr. Sanjeev B. Deshpande, Advocate for the respondent
in all Writ Petitions

CORAM : SANGITRAO S. PATIL, J.

JUDGMENT RESERVED ON : 29th AUGUST, 2017
JUDGMENT PRONOUNCED ON : 8th SEPTEMBER, 2017

COMMON JUDGMENT :

Rule, made returnable forthwith. With the
consent of the learned counsel for the parties, heard
finally.

2. Since common questions of law and facts are involved in these writ petitions, they are being decided by this common judgment.

3. By these writ petitions, the original defendant in Summary Suit Nos. 2 of 2016, 3 of 2016 and 4 of 2016, has challenged the vires of the orders dated 12th May, 2017, passed by the learned District Judge-1, Jalna, whereby his applications, seeking directions against the plaintiff to re-register the said suits as ordinary suits under Section 26 of the Code of Civil Procedure ("Code", for short), came to be rejected.

4. The learned counsel for the petitioner submits that the respondents have filed the above numbered Summary Suits as per the provisions of Order XXXVII of the Code. He submits that the contents of the complaints, the nature of the dispute – subject matter of the suits as well as the reliefs claimed therein do not fall within the classes of the suits to which Order XXXVII of the Code is applicable. He submits that the nature of the transactions – subject matter of the said suits appears to be that of money lending. The cheques are stated to have been issued by the petitioner towards

repayment of the loan amounts. There was no separate written contract for payment of the amounts – subject matter of the suits as well as the interest claimed thereon. Therefore, the said suits were not liable to be instituted as summary suits and should have been instituted as ordinary suits, as prescribed under Section 26 of the Code. He submits that the learned Trial Judge wrongly rejected the applications filed by the petitioner.

5. As against this, the learned counsel for the respondents submits that the suits are based on the cheques issued by the petitioner in the discharge of the amounts of loan borrowed by him from the respondents. The cheques basically are the bills of exchange. The suits, therefore, fall within the category of class (a), sub-rule (2), Rule-1 of Order XXXVII of the Code. The interest has been claimed at the rate of Rs.18% per annum on the amounts of cheques. The claim of the respondents towards recovery of the amounts of cheques as well as the interest accrued thereon being the fixed sum of money, the suits have been rightly filed under Order XXXVII of the Code. According to him, the applications filed by the petitioner were not at all

maintainable in view of the judgment in the case of ***SICOM LTD. Vs. PRASHANT S. TANNA and others 2004(2) Mh.L.J. 292***, which has been cited by the learned counsel for the petitioner also.

6. The Full Bench of this Court in the case of ***SICOM LTD.*** (supra), considered the scope of Order XXXVII of the Code and the kinds of suits which are maintainable as Summary Suits under the said Order. After considering various judgments and the provisions of Order XXXVII of the Code, this Court summarised the answers to the questions framed in paragraph No.2 of the judgment, as under:-

28. In the circumstances, we summarise the answer to the reference as follows:

(1) The judgments in *M/s Randerian & Singh vs. Indian Overseas Bank* and *Hydraulic and General Engineering vs. UCO Bank (1998)1 L.J.793* are overruled. The suit would be maintainable as a summary suit if it falls within one of the classes of suits enumerated in Order XXXVII, Rule 1 (2) even if the claim made therein is not properly quantified or is in excess of what the plaintiff is entitled to.

(2) In a summary suit filed under Order XXXVII of the Civil Procedure Code, the plaintiff is entitled at any time to abandon or give-up a part of the claim unilaterally. This, the plaintiff may do by making a statement to be recorded by the Court and without the necessity of the plaintiff making a formal application

for the same by withdrawing the summons for judgment, amending the plaint and thereafter taking out a fresh summons for judgment or otherwise.

(3) At the hearing of the summons for judgment, it will be open to the Court to pass a decree for a part of the claim and grant unconditional leave to defend the suit in respect of rest of the claim.

(4) At the hearing of the summons for judgment, it is open to the Court to grant conditional leave to defend in respect of a part of the claim and unconditional leave to defend for the remaining part of the claim. In such an order it would follow that in the event of the defendant failing to comply with the condition, he would suffer the consequences mentioned in Order XXXVII qua only that part of the claim for which conditional leave to defend has been granted and not in respect of that part of the claim for which unconditional leave has been granted.

(5) There may be further options available to the Court while passing an order on the summons for judgment. Our judgment does not exhaustively set out the options. Obviously, judicial discretion has to be exercised in consonance with the settled legal principles governing grant of leave to defend in summary suits."

7. In the present case, the summary suits have been filed by the respondents on the basis of the cheques. There is no dispute that the cheques are basically bills of exchange. The respondents have claimed specific sums – subject matter of the cheques

along with interest thereon at the rate of Rs.18% per annum. The claims, as such, made by the respondents thus fall under clauses (a) and (b), sub-rule (2), Rule 1 of Order XXXVII of the Code.

8. The complaints contain specific averments that the suits have been filed under Order XXXVII of the Code. In paragraph No.12 of the complaints, it is specifically mentioned that the reliefs claimed by the respondents are well within the confines of Order XXXVII of the Code. In the cause title of the complaints, there is specific mention that the suits are under Order XXXVII of the Code. Thus, the complaints exhibit specific compliance of classes (a) (b) and (c) of sub-rule (1), Rule-2 of Order XXXVII of the Code.

9. The learned counsel for the petitioner cited the judgment in the case of **S.P. Brothers Vs. Biren Ramesh Kadakia**, **LEX (BOM) 2008 3 33 = 2009(1) Bom. C.R. 453**, wherein it has been held, in paragraph No.9, as under:-

“It is a settled principle of law that before a plaintiff can bring a suit to be tried under the special summary procedure provided under Order 37 of the code, it is obligatory on the part of the plaintiff to satisfy the Court that the suit as framed is not only maintainable

under the provisions of Order 37 of the Code but no relief whatsoever have been claimed in the suit that are falling outside the ambit and scope of the said provision. Wherever such an objection is taken, which in fact has been taken in the present case, the law requires the plaintiff in a suit to show that taking the averments made in the plaint to be correct, the suit satisfies the ingredients of the special provisions. If the ingredients of Order 37 on the plain reading of the plaint are not satisfied, then plaintiff cannot claim any benefit of the summary procedure."

10. As stated above, the respondents/plaintiffs herein have complied with the requirements of Order XXXVII of the Code in respect of the above numbered suits filed by them. Moreover, as held in the Full Bench Judgment in the case of **SICOM LTD.** (supra), the suits, which fall within one of the classes of suits described under sub-rule (1), Rule 1 of Order XXXVII of the Code, would be maintainable as summary suits, even if the claim made therein is not properly quantified or is in excess of what the plaintiff is entitled to claim.

11. The learned counsel for the petitioner further placed reliance on the judgment in the case of **MAFATLAL FINANCE LIMITED Vs. EXPRESS INDUSTRIAL SERVICES PRIVATE LIMITED LEX (BOM) 1999 6 13 = 1999(3) Mh.L.J. 64.** In that case, the summary suit was filed under Order XXXVII of the Code by the tenant against the landlord for

recovery of Rs. 50,00,000/- given to the landlord as security and Rs. 10,55,000/- by way of interest. The claim of interest was not based on any agreement or enactment. It was, therefore, held that the claim for interest on the amount of security being not based on any agreement or enactment, that part of the claim would not fall within the summary procedure and no summary suit could have been filed insofar as interest portion was concerned.

12. It may be noted that after the judgment of the Full Bench in the case of **SICOM LTD.** (supra), the scope of the summary suit under Order XXXVII of the Code has been clarified and it has been held that even if the claim made in a summary suit is not properly quantified or is in excess to what the plaintiff is entitled, the summary suit would be maintainable.

13. In the above circumstances, I do not find any substance in the contention of the petitioner that the suits were not maintainable under Order XXXVII of the Code.

14. The learned Trial Judge has rightly considered the facts of the suits as well as the provisions of

Order XXXVII of the Code and rightly held that the suits are maintainable as summary suits under Order XXXVII of the Code. The impugned orders are quite legal, proper and correct. They do not call for any interference.

15. Before parting with this judgment, a note is required to be taken of the manner in which the learned District Judge-1 has referred to the citation in paragraph No.4 of the impugned order. The learned Judge has reproduced head-note/placitum instead of the specific ratio laid down by the Full bench of this Court. The head-notes are the opinions of the editor of the Law Journals concerned. The practice of reproducing the head-notes in the judgment has been deprecated by this Court in the case of ***Roy Joseph Creado and others Vs. Sk. Tamisuddin s/o Late Sk. Nazir Ahmed and others*** 2008(3) ***Mh.L.J.*** 705. Despite this judgment, some of the Judicial Officers reproduce head-notes in the judgments. Such practice has to be stopped.

16. The present writ petitions are liable to be dismissed for the reasons mentioned above. In the result, I pass the following order:-

O R D E R

- (i) The Writ Petitions are dismissed.
- (ii) Rule is discharged accordingly.
- (iii) No costs.

[SANGITRAO S. PATIL]
JUDGE

npj/wp9163-9165-9166-2017