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

+ **CM(M) 285/2017 & CM APPLs. 9832-9833/2017**

BHIM YADAV Petitioner
Through **Mr.Rakesh Mittal, Advocate**

versus

SUNIL KUMAR JAIN & ORS Respondents
Through **Mr.Ashish Virmani, Advocate**

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **10.03.2017**

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 07.02.2017 by which the application seeking leave to defend the summary suit was allowed subject to the petitioner furnishing a bank guarantee of Rs.15 lacs.
2. The respondents have filed a summary suit for recovery of Rs.16,26,686.30/- alongwith interest under Order 37 Rules 1 and 2 CPC. It is claimed in the plaint that the petitioner was in dire need of finances and respondent No.1 being a friend, and the petitioner being a client of the respondents, advanced an amount of Rs.7,00,000/- in the saving bank account of the petitioner through internet banking. On request of respondent No.1, respondents No.2 and 3 also paid a total amount of Rs.3,00,000/- to the petitioner. The said amount was said to have been returned by means of three different cheques amounting to Rs.7,00,000.00, Rs.3,00,000.00 and Rs.2,55,000.00. It is stated that a sum of Rs.10,00,000.00 returned as

principal amount and a sum of Rs.2,55,000.00 towards interest @ 23% on the said amount as agreed between the parties.

3. The trial court noting the judgment of the Supreme Court in the case of ***Mechelec Engineers and Manufacturer v. Basic Equipment Corporation, AIR 1977 SC 577***, allowed the application for leave to defend subject to the petitioner furnishing a bank guarantee of Rs.15 lacs.

4. I have heard the learned counsel for the parties.

5. The learned counsel for the petitioner relied upon the judgment of this court in ***IFCI Factors Ltd. Maven Industries Ltd. & Ors., 225 (2015) DLT 32*** to contend that unless the entire cause of action is within the provision of Order 37 CPC, the suit under Order 37 would not lie. It is submitted that it is manifest that the suit seeks recovery of Rs. 16,26,686.30/- whereas the cheques which have been returned unpaid, are a total only of Rs.12,55,000.00. Hence, for the balance sum, the respondents claimed interest which is not based on the written agreement between the parties and an Order 37 CPC suit would not lie.

6. The admitted position is that the suit is a summary suit for recovery of Rs.16,26,686.30/- alongwith interest under Order 37. Section 80 of the Negotiable Instruments Act, 1881 specifies regarding the interest where no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of 18% per annum, from the date at which the same ought to have been paid by the party. Hence, the contention of the petitioner that Order 37 CPC is not applicable, is misplaced. The claim is based on a statutory provision.

7. At this stage, the learned counsel for the petitioner submits that he

does not fall in the category where the Supreme Court in *Mechelec Engineers and Manufacturer v. Basic Equipment Corporation*(supra), conditional leave to defend is to be granted. It is the contention of the petitioner that the trial court wrongly imposed the condition upon him.

8. In my opinion, there are no reasons to interfere with the impugned order. The present petition is dismissed. All the pending applications, if any, dismissed.

JAYANT NATH, J.

MARCH 10, 2017/v