

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

% **Date of decision: 16th May, 2017**

+ **CS(OS) No.556/2016**

SUNIL ALAGH

..... Plaintiff

Through: Mr. Manav Gupta, Mr. Sahil Garg and
Ms. Ridhi Munjal, Advs.

Versus

SHIVRAJ PURI & ANR.

.....Defendants

Through: Ms. Diviani Khanna and Ms. Upasana
Talwar and Mr.Vivek Singh , Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

IA No.6002/2017 of the defendants under Order XXXVII Rule 3(5) of the CPC).

1. The two defendants Shivraj Puri and Raghuraj Puri, in this suit under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) for recovery of Rs.9,15,00,000/-, pursuant to service (stated to be on 3rd April, 2017) of the summons for judgment, on 12th April, 2017 (re-filed on 12th May, 2017) filed this application for leave to defend with affidavits in support thereof of both the defendants.

2. The application though re-filed on 12th May, 2017 i.e. after more than seven days of the original filing on 12th April, 2017 is not accompanied with any application for condonation of delay in re-filing. Re-filing beyond seven days, in law is a fresh filing. The application filed on 12th May, 2017 is clearly beyond the time of ten days prescribed in Order XXXVII Rule 3(5) from stated date of service of the summons for judgment on 3rd April, 2017 and liable to be rejected on this ground alone. In fact on perusal of the office

file it is found that the summons for judgment were served, at the address given in the Memo of Appearance, on the counsel for the defendants on 1st April, 2017. The first filing on 12th April, 2017 also was thus beyond time.

3. The application is liable to be dismissed on this ground alone. However since during the hearing counsels have not addressed on the said aspect and have been heard on merits, I refrain from doing so.

4. Though the application has come up today for the first time but having gone through the same and being *prima facie* of the opinion that the application does not disclose a ground for grant of leave to defend, the counsel for the defendants has been heard at length and has after conclusion of hearing been also permitted to hand over copies of the judgments relied upon.

5. The plaintiff has instituted this suit pleading that (i) the plaintiff has known defendant no.2 Raghuraj Puri for the past several years and the defendant no.1 Shivraj Puri is the son of the defendant no.2; (ii) on 30th June, 2014 the defendant no.2 telephonically informed the plaintiff that the property dealer contacted by the plaintiff for sale of the plaintiff's "residential plot at DLF" had fraudulently sold the said plot to five different persons and certain criminal cases for the offence of cheating had been registered against the plaintiff and his wife and were pending in the Gurgaon District Court and that the plaintiff and his wife were likely to be arrested at any time; (iii) the defendant no.2 assured the plaintiff that his son the defendant no.1 would clear up the cases and ensure that the plaintiff and his wife do not get arrested but an amount of Rs.8,50,00,000/- was immediately required therefor, for depositing Rs.6,50,00,000/- in the Courts at Gurgaon

and the balance for securing bail for the plaintiff and his wife; (vi) the plaintiff sent the said money to the defendant no.2 through RTGS from his bank account; (v) the defendants continued to inform the plaintiff of the steps being taken by them on behalf of the plaintiff and continued to do so till first week of August, 2014 and the plaintiff sent a total amount of Rs.13,15,00,000/- to the defendants; (vi) when the defendants despite repeated demands of the plaintiff and their assurances failed to supply even a single document relating to the cases filed to the plaintiff, the plaintiff made enquiries and learnt that there were no such criminal cases ever pending against the plaintiff and his wife either in the Gurgaon District Court or the Tis Hazari Courts; the plaintiff further learnt that the defendant no.1 is a habitual criminal and had been convicted “in the Citibank fraud case” and had cheated the said bank for an amount of more than Rs.300 crores; the plaintiff thus confronted the defendant no.1 and the defendant no.1 issued several current dated and post dated cheques in favour of the plaintiff towards discharge of liability to return the entire amount of Rs.13,15,00,000/-; (vii) all the cheques for the entire amount of Rs.13,15,00,000/- were dishonoured on presentment; (viii) on 26th August, 2014, in pursuance to the criminal complaint dated 25th August, 2014 filed by the plaintiff against the defendants, FIR No.98/2014 was registered against the defendants at P.S. EOW under Sections 406, 420, 120B of the Indian Penal Code, 1860 and both the defendants arrested; (ix) on 29th September, 2014, both defendants entered into a written contract / Memorandum of Settlement (MoS) dated 29th September, 2014 with the plaintiff as under:-

“MEMORANDUM OF SETTLEMENT

This memorandum of settlement is made on this the 29th day of September 2014

BETWEEN

Mr. Sunil Kumar Alagh, s/o Mr. Kewal Krishan Alagh, r/o 12 C IL Palazzo, Little Gibbs Road, Mumbai 400 006 hereinafter referred to as the party of the first part, which expression unless repugnant to the context and meaning thereof shall mean & include his legal heirs, successors, legal representatives, nominees and assignees of the ONE PART

AND

Shivraj Puri, s/o Raghuraj Puri & Raghuraj Puri, s/o Late Sh. S. P. Puri, both r/o Flat 5A, Building 10, Magnolia Complex, DLF, Phase V, Guragon, through Ms. Vandana Mandhana, w/o Shivraj Puri, r/o Flat 5A, Building 10, Magnolia Complex, DLF, Phase V, Guragon hereinafter referred to as the party of the second part, which expression unless repugnant to the context and meaning thereof shall mean & include their legal heirs, successors, legal representatives, nominees and assignees of the OTHER PART

WHEREAS the first party had lodged a complaint against the second party which led to registration of FIR No. 98/2014, EoW, Mandir Marg, New Delhi u/s 406, 420, 120B IPC on 26/8/2014, contents of which are not reproduced as are not necessary

AND WHEREAS the parties of the, second part were arrested on 27/8/2014 and at first remanded to police custody and are at present lodged in Tihar Jail, New Delhi by the order dated 10/9/2014 passed by Sh. Sanjay Khanganwal, CMM, Patiala House Court, New Delhi

AND WHEREAS without prejudice to the rights, contentions & allegations; the second party hereto have of their own volition *offered* the following settlement due to intervention of well wishers, friends, relatives & lawyers, to which the first party has shown its acceptance.

AND WHEREAS Ms. Vandana Mandhana, w/o Shivraj Puri & daughter in law of Raghuraj Puri has been authorized by them to sign and execute

the present settlement on their behalf. Shivraj Puri & Raguraj Puri shall however, also sign the present agreement, with the permission of the Hon'ble Court.

NOW THIS AGREEMENT WITNESSETH AS UNDER:

1. That the second party has offered to pay to the first party a total sum of Rs. 13.15 Crores, in full and final settlement of all their claims as per FIR 98/2014.
2. That the settlement amount of Rs. 13.15 Crores shall be paid in the following manner.
 - (i) At the first instance, the second party shall pay a sum of Rs. 4 Crores which amount shall be paid as under:
 - Rs. 3.38 Crores lying in the bank account of Normans Martin Brokers Private Limited, with ING Vysya Bank, Karol Bagh, New Delhi be released unconditionally in favor of the first party. Application for de-freezing the bank account shall be filed before the competent court and the parties shall ensure full co-operation for the same and would request the court for de-freezing the bank account and release of the said amount.
 - Jewellery lying in the locker of Sh. Raghuraj Puri in HDFC Bank, Galleria Market, DLF Phase IV, Gurgaon belonging to Ms. Vandana gifted to her by Shivraj Puri at the time of their wedding. The said locker having been sealed by the Investigation, Mr. Raghuraj Puri shall move an application for de-freezing of the said locker for which the complainant shall ensure full co-operation. After taking the jewelry from the said account, the same shall be disposed off at the best possible price and the sale proceeds shall be appropriated to the credit of the complainant till such amount of Rs. 4 Crores is arrived at, including the amount of Rs. 3.38 Crores as aforementioned. In case of any shortfall, the same shall be made good for by Ms. Vandana till the first party unconditionally gets paid a total sum of Rs. 4 crores. Upon de-freezing of the locker, if any liquid cash is found therein, the same shall also be handed over to the first party in discharge of the liability of the second party to the first party. In the event the sale proceeds of the jewelry and handing over of any

liquid cash exceeds the total agreed amount of Rs. 4 Crores, then the same shall also be appropriated to the account of the first party in discharge of the liability of the second party towards the total amount of Rs 13.15 crores. The complainant shall ensure full cooperation for the aforesaid purpose.

3. Balance sum of Rs. 9.15 Crores due and outstanding after the discharge of the initial liability of Rs.4 crores shall be paid by the second party to the first party in the following manner:
 - (i) Rs. 1 Crore within 45 days from the date of release of the Second party from custody, with a grace period of 10 days in favor of the second party in paying the same.
 - (ii) Thereafter, the second party shall pay to the first party a sum of Rs. 1 Crore every 35 days, with a grace period of 5 days in payment of each instalment of an amount of Rs. 1 Crore. The second party shall continue paying the first party such amounts till the entire amount of Rs. 9.15 Crores is repaid by the second party.
4. That as and when, the second party is in a position, to accumulate the sum of Rs. 4 Crores, either in the bank account of Normans Martin Brokers Private Limited, by sale of jewellery or by own funds, the second party shall prefer an application u/s 437 CrPC for grant of bail, for which the first party shall have no objection once the sum of Rs. 4 Crores shall be released in favor of the first party/complainant simultaneously. Both parties undertake to make a statement to this effect before the Ld. Court of CMM, New Delhi. Needless to mention that bail shall initially be for a period of 45 + 10 day grace period and thereafter extended for a period of 35 + 5 day grace period on each occasion in terms of the payment plan hereinabove. The bail shall stand confirmed on repayment of the entire amount of Rs. 13.15 Crores. The first party has been informed that the passports of Mr. Shivraj Puri and Mr. Raghuraj Puri are lying with the Gurgaon District Court and as such cannot be deposited before the Competent Court in the present case. The second party however undertakes to not travel abroad without the prior permission of the Competent Court in the present case.
5. It is agreed between the parties that incase the second party

defaults in payment of any instalment till such time the entire balance of Rs.9.15 Crores is repaid, the interim bail so granted shall automatically come to an end. The amount already paid by the second party shall not be refundable under any circumstances whatsoever and second party shall not claim any right over the said amount so paid except that in case of any recovery suit filed by the first party, same shall be adjustable as per law against the liability of the second party towards first party.

6. It is also agreed between the parties that in the event the entire amount (including any other amount which is payable by second party to first party; which is further liable to be settled upon release of the party of the second part from custody) is repaid to the satisfaction of the first party, the first party shall co-operate with the second party in getting the FIR quashed from the court of competent jurisdiction. The first party shall not refuse in signing the said joint petition for quashing on the basis of full and final settlement.
7. That the second party shall indemnify the first party against any claim of a third party in the misuse of original/photocopies of the document of ownership of the first party's property at DLF, Gurgaon, being property bearing No. A16/3 DLF., Phase I, Gurgaon, which property the first party joint owns with his wife Ms. Maya Alagh since a General Power of attorney and other allied documents were in possession of the second party. Moreover, the second party also indemnifies the first party against any misuse of any letters; documents that were handed over to the second party in trust.
8. That the second party undertakes to give no objection in favor of the first party for release of whatever amount over and above Rs. 4 Crores is recovered by the investigation as part of case property. The same shall be adjusted in payment of installments which are due to be paid by the second party to the first party, if released by the court unconditionally in favor of the first party.
9. That the first party is initiating proceedings u/s 138 of the Negotiable Instruments Act, against the second party in respect of certain cheques issued by the second party in favor of the first party. However, the said proceedings/cases if filed, shall be

withdrawn by the first party soon after the conditions of this memorandum of settlement are attained. Furthermore, the first party has issued a legal Notice dated 17.09.2014 to Karur Vysya Bank and Mr. Shiv Raj Puri for non payment of Rs. 4.4 crores as promised. However, if any legal proceedings/cases are filed in continuation of the said legal Notice dated 17.09.2014, shall be withdrawn by the first party soon after the conditions of this memorandum of settlement are attained in its letter and spirit.

10. That this settlement shall be placed before the trial court and it is for the said court's discretion to allow operation of the locker or release the amount lying seized in the various bank accounts of the second party and to grant bail to the second party as agreed to in this memorandum of settlement.
11. That this present agreement has been voluntarily signed, executed by both the parties without any force, fraud, undue influence or coercion from any quarters. At no stage, will the second party challenge the settlement on the ground that the settlement was arrived at when they were in custody or that due to their being in custody, they were coerced to enter into this settlement agreement.

IN WITNESS WHEREOF the Parties to this memorandum of settlement have signed on date mentioned above at New Delhi.”

(x) in furtherance of the aforesaid MoS, the plaintiff has already received an amount of Rs.4,00,00,000/- under the supervision of the Trial Court; (xi) however the balance sum of Rs.9,15,00,000/- has not been paid by the defendants to the plaintiff despite the defendants being on regular bail; and, (xii) the learned Single Judge of this court in order dated 21st September, 2016 in Bail Application No.562/2016 and Criminal M.B. No.574/2016, while releasing the defendant no.1 on bail has recorded the admission and undertaking of the defendant no.2 to pay the remaining liability of Rs.9,15,00,000/- in terms of MoS.

6. Summons for appearance and thereafter summons for judgment as aforesaid were issued to the defendants.

7. The defendants seek leave to defend on the following grounds set-out in the identical affidavits of the two defendants:-

- (i) that the suit is frivolous, farfetched and gross abuse of process of law; the plaintiff by an ingenious presentation has created an illusion of a cause of action;
- (ii) that the plaintiff has been known to the defendants for several years and has regularly conducted business transactions with the defendants and their company Normans Martin Brokers Private Ltd.;
- (iii) there are numerous e-mails exchanged between the plaintiff and the defendants that clearly reflect regular payments of huge sums of money made by the plaintiff for the purposes of investment into the account of the defendants and which have been returned from time to time to the plaintiff along with the profit quotient earned on them;
- (iv) the transactions subject matter of the present suit are also part of these e-mails exchanged and are clearly reflected therein and are admitted by the plaintiff and his counsels in the criminal proceedings in the District Court;
- (v) the story set up by the plaintiff is not believable by any stretch of imagination, especially vis-à-vis the plaintiff who is an extremely well read and well placed person;

- (vi) “the plaintiff has sought to play fraud on the defendants by misusing the document of settlement which has been signed by the defendant no.1 while he was in custody in the above mentioned FIR and had signed the said document under duress”;
- (vii) an amount of Rs.4,00,00,000/- has been extracted by the plaintiff from the defendants pursuant to the arrest of the defendants “in consequence of the agreement which was entered into by and between the parties dated 29.9.2014, which was entered into without prejudice to the rights and contentions of the parties at *lis*. The said Memorandum of Settlement was outcome of undue pressure and coercion exercised by the plaintiff on the defendants as at that time the defendants were in custody and the plaintiff allured the defendants that if the said Memorandum of Settlement is signed, he will get the defendants bailed out. The plaintiff therefore induced the defendants by making false promises and pressurised them for execution of the Memorandum of Settlement which is totally vague, false and non-negotiated contract. This one sided agreement drafted by the plaintiff was got signed from defendants by exercising extreme kind of pressure by extending threat that if the same is not signed, the defendants will continue to remain in custody. It was the condition of the Memorandum of Settlement that plaintiff will give no objection for bail of defendants and based on this

condition, the defendants and their family were induced to execute the settlement. However, the said Memorandum of Settlement became infructuous as the contingency of the agreement being that the plaintiff would not oppose the bail of defendants fell apart on 10.02.2015 when the plaintiff showed his actual colors and resiled from the promise not to oppose the bail. The plaintiff vehemently opposed the bail of the defendants and by his own conduct withdrew from the agreement and the same became null and void. Further, due to the evil designs of the plaintiff, the defendants were incarcerated since 27.08.2014 in the above mentioned FIR and were only enlarged on bail on 21.09.2016 by the Hon'ble Delhi High Court”;

- (viii) that the criminal case is at the juncture of conclusion of the prosecution evidence and the examination, cross-examination of the plaintiff as complainant stands completed qua both the defendants;
- (ix) the present case has been filed only to prejudice the defendants in the criminal trial;
- (x) the plaintiff has admittedly remained CEO of a multinational company 'Britannia' and also participates in news debates / political / social discussions on a daily basis on National Television and it is unbelievable that the plaintiff would have believed what the defendants are alleged to have represented to the plaintiff;

- (xi) that the story set-up by the plaintiff is a blatant lie on the face of it;
- (xii) the plaintiff and the defendant no.2 have known each other for 40 years and have shared familial relations;
- (xiii) the defendant no.1 having substantial knowledge of stock options and stock market would routinely make investments, for the benefit of self and for friends and family; the investments made on behalf of friends and family were on purely consultancy basis and profit / loss was on the investor's account;
- (xiv) all this was in the knowledge of the plaintiff who started showing interest in making investments through the defendant no.1;
- (xv) it was clear understanding between the parties that the plaintiff will make investment in stock market through defendants, the plaintiff would be responsible for profit or loss and the defendant no.1 will charge his consultancy fee;
- (xvi) on account of close relations between the parties no written understanding was arrived at; however the mode and manner in which transactions have happened between the parties over a considerable period of time itself is evidence of the fact that the defendant no.1 acted as agent of the plaintiff for investing plaintiff's funds in stock market and the profit / loss was to the plaintiff's account;

- (xvii) that the defendant no.1 operated in a manner wherein he would accumulate the funds to be invested received from various prospective investors in his bank accounts and further route them into the stock broking accounts like Destimoney Securities Private Limited, Globe Capital Market Limited and Edelweiss Broking Limited;
- (xviii) the said accumulated funds would be invested by the defendant no.1 in the abovementioned stocks and options and the principal amounts of investment along with the profits accrued thereto would be returned to the respective investors in the proportionate manner of their investments for a commission payable to the defendant no.1;
- (xix) the plaintiff was amply forewarned about the market risks intricate in such investments;
- (xx) it was always assumed, understood and agreed between the parties that all the profits and losses will be borne by the plaintiff and the defendant no.1 was merely a consultant who would be entitled to commission;
- (xxi) the plaintiff has raised the claims as an afterthought;
- (xxii) since 2013, the plaintiff started transferring funds into the defendant no.2's bank account through electronic transfer and which funds would be further transferred into other bank accounts like SP Puri HUF Account and be finally invested into the accounts maintained with the stock broking

companies specifically Destimoney Securities Private Limited and Globe Capital Market Limited;

- (xxiii) that the defendant no.1 earned substantial amounts of profits to the plaintiff which were regularly paid back to the plaintiff along with principal amount invested;
- (xxiv) due to volatile and unpredictable nature of the stock market, some amount invested by the plaintiff bore no profit, rather resulted in losses which is evident from the financial statements of Destimoney Securities Pvt. Ltd. for the financial year 2013-2014;
- (xxv) the plaintiff forwarded monies to the defendants only for the purposes of investments on his behalf, also referred to in the order dated 27.11.2014 of the Additional Sessions Judge, Patiala House Courts, New Delhi disposing of an application under Section 439 CrPC in FIR No.98/2014;
- (xxvi) the first tranche of Rs.85,00,000/- received by the defendants from the plaintiff on 30th June, 2014 was much before the telephone call claimed to have been received by the plaintiff from the defendants;
- (xxvii) the plaintiff, before the Sessions Courts on 21st November, 2014 admitted the entire e-mail correspondence filed by the defendants along with their bail application;
- (xxviii) in one of the e-mails dated 8th August, 2014 the plaintiff has stated that the “entire amount as covenanted in the complaint plus some more amounts, plus interest, all totalling

Rs.20,00,00,000/- were receivable by the plaintiff from the defendant no.1 along with a profit quotient, which very clearly proves that the monies were in regard to investments and not for the purpose as stated in the present suit”;

- (xxix) the Agreement dated 29th September, 2014 on the basis of which this suit under Order XXXVII has been filed was executed when the defendants were in judicial custody; the MoS neither authenticated by the concerned MM / ASJ or the Jail Superintendent and has no meaning in law;
- (xxx) the defendants and their family members were induced to sign the agreement by making false representation that the plaintiff will not oppose the bail application of the defendants;
- (xxxi) the agreement was got drafted by the plaintiff and the defendants were not even allowed to read it and their signatures were taken by resorting to fraud, misrepresentation, coercion and undue influence;
- (xxxii) the plaintiff has extracted Rs.4,00,00,000/- from the defendants by falsely representing that he will support the defendants to be bailed out; however the plaintiff backed out from the promise by opposing the bail;
- (xxxiii) the agreement therefor became infructuous as the contingency of the agreement was that the plaintiff will not oppose the bail of the defendants;

- (xxxiv) the agreement does not disclose as to how Rs.13,15,00,000/- became due and payable;
- (xxxv) the plaintiff has misused the cheques of the defendants and banked the same with ulterior motives; the said cheques were lying as security and the plaintiff could not have banked the said cheques as there was no liability of the defendants towards plaintiff in view of the plaintiff's money having lost in the stock transactions;
- (xxxvi) the MoS dated 29th September, 2014 is void and unenforceable in law;
- (xxxvii) this Court does not have territorial jurisdiction to entertain the suit as the defendants do not carry on their business at Delhi as alleged, the defendants at one point of time had their office at Barakhamba Road, New Delhi but which has been sold vide Agreement to Sell dated 11th March, 2013; and,
- (xxxviii) no amount is payable by the defendants to the plaintiff.

8. On perusal of the aforesaid affidavits, it appeared that the defendants are not disputing receipt through electronic transfer from the bank account of the plaintiff of a sum of Rs.13,15,00,000/-. It further appeared that the defendants had not made any averments in their affidavits to show a relationship as between a stock broker and a client with the plaintiff. It is for this reason that the need to call for reply to the application for leave to defend was not felt and the counsel for the defendants was asked to address arguments.

9. The counsel for the defendants during hearing also does not dispute receipt by the defendants of a sum of Rs.13,15,00,000/- by electronic transfer from the bank account of the plaintiff. The counsel for the defendants, inspite of repeated questioning, whether not in terms of the requirements of Stock Exchange and Securities and Exchange Board of India (SEBI), the defendants were required to maintain proper accounts of the investments in the stocks on behalf of the plaintiff, could not show anything whatsoever.

10. The defendants, along with their application for leave to defend, besides the MoS dated 29th September, 2014, FIR no.98/2014 of P.S. EOW have filed (i) e-mails exchanged between the plaintiff and the defendant no.1; (ii) charge sheet filed in FIR No.98/2014; (iii) order dated 27th November, 2014 of the Additional Sessions Judge, Patiala House Courts; (iv) “documentary evidence obtained from the bank i.e. ING Vysya Bank of the defendant no.2”; (v) “documents to show investment made by the defendant no.1 on behalf of the plaintiff in stock and options”; (vi) order dated 10th February, 2015 of this Court; and, (vii) evidence of the plaintiff recorded in the Court of ACMM.

11. The counsel for the defendants however during the hearing has not referred to a single document.

12. I have however examined the documents and with respect thereto find (i) the e-mails exchanged are w.e.f. 13th October, 2013 to 20th August, 2014; (ii) the e-mails from plaintiff are merely of confirmation of transfer effected of the amounts through RTGS and of asking for return of the money; (iii) e-

mail dated 25th March, 2014 of the defendants to the plaintiff is of dispatch of the cheques through courier to be deposited within two weeks' span and which e-mail belies the plea of the defendants of the cheques having been given as security with the understanding of the plaintiff not presenting the same; (iv) in e-mail dated 24th June, 2014, Normans Consultancy Private Limited gave payment schedule from 28th June, 2014 to 12th July, 2014 of Rs.235 lacs to the plaintiff; (v) vide e-mail dated 7th May, 2014 the defendants promised payment of Rs.1.10 crores against a principal of Rs.78.5 lacs with a promise to explain the difference of Rs.31.5 lacs personally – the plaintiff vide reply mail of 8th May, 2014 acknowledged receipt of cheques of Rs.85,00,000/- only and complained about another cheque mentioned in the e-mail of 7th May, 2014 of Rs.25,00,000/- having not been received.

14. None of the e-mails show the relationship as claimed by the defendants, of the defendants investing monies on behalf of the plaintiff at the risk of the plaintiff. All that the e-mails show is, i) transfer of money by the plaintiff to the defendants and the repeated reminders of the plaintiff to the defendants to return the monies; ii) acknowledgements of the defendants of receipt of money and promises by the defendants to dispatch monies to the plaintiff. In none of the e-mails have the defendants rendered any accounts of profit or loss on investments to the defendants or even refused any payment demanded by the plaintiff.

15. In this suit by the plaintiff for recovery of monies paid to the defendants, a) receipt of money is not disputed by the defendants; b) the

defendants in the written agreement admittedly executed by the defendants have agreed to refund the said monies to the plaintiff; and, c) the defendants have already refunded part of the money agreed to be refunded, to the plaintiff.

16. The plea of the defendants is that the monies were not received from the plaintiff for the reason and in the circumstances pleaded by the plaintiff. It is further the plea of the defendants that a) the monies were received from the plaintiff for investment in stocks and shares at the risk of the plaintiff; b) the monies were so invested and have been lost; c) the defendants are thus not liable to refund the same; and, d) the written agreement was got executed from the defendants under duress; the plaintiff, by opposing bail, has breached his part of agreement.

17. Once receipt of monies by the defendants from the plaintiff is not in dispute, in my view, all that has to be seen is, whether the reason given by the defendants for being not liable to return the same to the plaintiff raises any triable issue.

18. In this suit, we are not to decide whether the version of the plaintiff of the reason for advancing monies is correct or not. The entire emphasis in the affidavits accompanying leave to defend is on the improbability of the circumstances pleaded by the plaintiff for payment of the said monies to the defendants and the defendants having been coerced to sign the MoS. The said circumstances are subject matter of the prosecution of the defendants on the complaint of the plaintiff. Even if the said circumstances are proved by the defendants to be figment of plaintiff's imagination, the receipt of money

having not been disputed by the defendants, the defendants would still remain liable to refund the same unless in their affidavits disclose defence to raise to the suit i.e. that they are not liable to refund the monies received from the plaintiff. Supreme Court in ***Bhagwati Prasad Vs. Chandramaul*** AIR 1966 SC 735 held that the doctrine that if a party asks for a relief on a clear and specific ground it would not be open to the said party to attempt to sustain the same claim on a ground which is entirely new, cannot override the legitimate considerations of substance. It was further held that if a plea is not specifically made and yet it is covered by an issue by an implication then the mere fact that the plea is not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it. Accordingly, decree for possession, sought on the ground of the tenancy of the defendant having been terminated but granted on the ground that though the defendant was not proved to be a tenant of the plaintiff, had not been able to prove title set up adversely to the plaintiff and was thus a licensee of the plaintiff and liable to be dispossessed, was upheld.

19. I am afraid, the application of the defendants for leave to defend fails on this count. The plea of the defendants in the leave to defend of having received Rs.13,15,00,000/- from the plaintiff for investment in the stocks and shares and having been so invested and having been lost is totally unsubstantiated. I have during the hearing enquired from the counsel for the defendants whether not receipts of such amounts in the bank account of the defendants and investment thereafter thereof would have been reflected in the books of accounts and Income Tax Returns of the defendants and with respect where to not only has not a single document been filed but there is no

whisper in the affidavits accompanying the application for leave to defend. The only inference is that the defence raised of having received the money on such count is not substantial. Not only so, if the understanding between the parties was as averred, there was no question of the defendants giving cheques to the plaintiff by way of security as has been pleaded by the defendants and which plea also is falsified from the e-mails filed by the defendants themselves of some of the cheques at least having been forwarded in terms of schedule of payment. If the risk in the investments to be made were to be of the plaintiff, the question of the defendants furnishing any security did not arise. Security is furnished only when the monies received are accompanied with a promise to repay the same to guarantee such repayment.

20. Not only so, had there been any substance in the plea in the affidavits accompanying the application for leave to defend, there would have been regular accounts in the custody of the defendants of monies received from the plaintiff, investments thereof, returns thereon and the present value of the said investments. The plea of the said investments having suffered a loss is itself unbelievable. Investments in stocks and shares would remain in the form of stocks and shares though their value may have plummeted.

21. The documents under the title “Documents to show investment made by the defendant no.1 on behalf of the plaintiff in stocks and options” filed by the defendants are, (i) statements of accounts of SP Puri HUF with Destimoney Securities Private Limited; (ii) statements of bank accounts of the defendants and the same though again show regular transfer of monies

from the plaintiff to the defendants and from the defendants to the plaintiff, do not show the relationship between the parties to be as pleaded by the defendants.

22. As far as the contention, of the MoS aforesaid having been executed under duress is concerned, the order dated 27th November, 2014 of the Additional Sessions Judge, Patiala House Courts, Delhi relied upon by the defendants though mentions the MoS aforesaid does not record any contention of the defendants or their counsel of the same having been executed under duress; rather in para 22 the contention of the counsel for the defendants with respect thereto was that the same was not in relation to the monies claimed by the plaintiff to have been paid in his complaint to the defendants but for refund of the monies which the defendants owed to the plaintiff and which again is admission of the liability of the defendants. In fact the Sessions Judge in para 26 of the order has noted that “counsel for the accused did not dispute that they owed money to the complainant and submitted that it was for that reason that the accused had entered into such a settlement, but without prejudice to their contentions on the merits of the present matter”. It is further recorded in para 27 that “the accused did not dispute that the money was due and payable to the complainant but he submitted that the payments were due on account of commercial transactions and not on account of any fraud committed upon the complainant”. The observations of the learned Additional Sessions Judge to the effect that the plaintiff seemed to have been regularly investing large sums of money with the defendants in return of profits which he had been receiving from time to time cannot be of any avail in this suit. As aforesaid, the defendants in the

said order also admitted their liability under the Agreement to the plaintiff. The order dated 10th February, 2015 of this Court filed by the defendants along with their application for leave to defend also does not record any plea / contention of the defendants of the agreement having been signed under duress.

23. The counsel for the defendants has referred to ***Mechelec Engineers & Manufacturers Vs. Basic Equipment Corporation*** AIR 1977 SC 577. I have however drawn attention of the counsel for the parties to ***IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd.*** (2017) 1 SCC 568 holding that pursuant to the amendment of Order XXXVII Rule 3 of the CPC, the principles stated in ***Mechelec Engineers & Manufacturers*** supra stand superseded qua summary suits instituted post 1976. It was further held that leave to defend should be refused when the defendant has no substantial defence and / or raise any genuine triable issues and the Court finds such defence to be frivolous or vexatious. It was yet further held that when any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, even if triable issue or substantial defence is raised, shall not be granted unless the amount so admitted to be due is deposited in the Court.

24. The present, in the facts and circumstances aforesaid, is not a case of the defendants having raised triable issues or a substantial defence in the application for leave to defend.

25. I may also notice that though a Single Judge of this Court in ***Texem Engineering Vs. Texcomash Exports*** (2009) 162 DLT 444 held that a plaint

in a suit based on a contract, agreeing to make all possible statements in the Court to ensure bail and to take steps for finishing the case is liable to be rejected under Order VII Rule 11 of the CPC but the Division Bench in appeal reported as ***Texem Engineering Vs. Texcomash Exports*** (2011) 179 DLT 693 restored the suit observing that when such a contract has been made in pursuance to commercial or other dealings between the parties and whereunder one of the parties has also agreed to payment in return of the amounts due, the plaint cannot be rejected. Merely because an agreement is signed by a person when in prison does not lead to any presumption of the same being under coercion. Reference in this regard can also be made to ***Aanchal Cement Limited Vs. Gimpex Limited*** 2013 SCC OnLine Mad 3875. It is however not deemed appropriate to comment further on the said aspect as the counsel for the defendants has not urged the same.

26. The counsel for the defendants has also referred to (i) ***Madan Singh Vs. Phoolwati*** 2016 SCC OnLine Del 2310 holding that acquittal or conviction in a criminal case has no evidentiary value in a subsequent civil litigation except for the limited purpose of showing that there was a trial resulting in acquittal or conviction and that the findings of a criminal court are inadmissible; (ii) ***Wishwa Mittar Bajaj & Sons Vs. UOI*** (2013) 137 DRJ 468 (DB) holding that standard form of 'no claim certificate' has no sanctity in law and the dispute raised with respect thereto is referable to arbitration; and, (iii) ***Central Inland Water Transport Corporation Limited Vs. Brojo Nath Ganguly*** (1986) 3 SCC 156 holding that a contract induced by undue influence is voidable.

27. There can be no doubt with respect to the propositions enunciated in the judgments aforesaid; however I fail to understand as to how the same are applicable to the present controversy. Though undoubtedly the defendants have raised a plea of contract on the basis whereof the suit has been instituted having been executed under duress but the defendants at no point prior hereto, for the last nearly two and a half years since when the contract has been in existence, pleaded so and have rather throughout during the course of their prosecution been contending that the same is in discharge of the commercial liability owed by them to the plaintiff and not in admission of the offence of which they are accused of. The defendants have thereby admitted their liability within the meaning of ***IDBI Trusteeship Services Ltd.***, disentitling them to leave to defend. Reference in this regard can also be made to ***Rakesh Gupta Vs. Khoday India Ltd.*** 2013 (133) DRJ 39 and ***Khoday India Ltd. Vs. Rakesh Gupta*** 2013 SCC OnLine Del 3110 (DB) (SLPs No.25898-25899/2014 preferred whereagainst were dismissed in *limine* on 23rd September, 2014).

28. The counsel for the plaintiff has referred to ***Premier Exports Vs. Hindustan Cold Storage*** 2001 (89) DLT 212 which case is on the aspect of territorial jurisdiction.

29. As far as the plea of the territorial jurisdiction is concerned admittedly the MoS whereunder monies are claimed executed in Delhi and this Court has territorial jurisdiction.

30. There is thus no merit in the application for leave to defend which is dismissed.

CS(OS) No.556/2016 and IA No.6003/2017 (of the defendants for exemption)

31. Consequent to the dismissal of the application for leave to defend, a decree is passed in favour of the plaintiff and against the defendants, of recovery of Rs.9,15,00,000/- with interest @10% per annum w.e.f. the institution of the suit till realisation. The plaintiff shall also be entitled to costs of this suit.

Decree sheet be prepared.

MAY 16, 2017

‘pp’..

(corrected & released on 29th May, 2017)

RAJIV SAHAI ENDLAW, J.

