

\$~3

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

+ CM(M) 1357/2016

AMIT KUMAR

..... Petitioner

Through: Mr. Naveen Kumar Raheja, Adv.

Versus

GUNJAN JUNEJA

..... Respondent

Through: Mr. Dinesh Verma and Mr. Ramesh
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **16.10.2017**

1. This order is in continuation of the earlier order dated 31st August, 2017.
2. The counsel for the respondent appears.
3. The counsels have been heard.
4. The counsel for the petitioner has argued that the suit was not maintainable under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) and summons were wrongly issued as there is no averment even in the plaint of the respondent / plaintiff not claiming any relief outside the ambit of Order XXXVII of CPC. It is argued that the same is a mandatory requirement.
5. A perusal of the plaint shows the suit to be titled / described as under Order XXXVII of CPC and the respondent/plaintiff in the plaint to have averred that the cause of action arose in Delhi and Order XXXVII of CPC was applicable and the amount was sought to be recovered under the summary procedure.

6. Though undoubtedly the language is not identical to the language used in Order XXXVII but is found to be in sufficient compliance thereof. The suit is based on as many as six cheques claimed to have been issued by the petitioner/defendant in favour of the respondent/plaintiff for a total sum of Rs.4,07,000/- and would fall within the ambit of Order XXXVII of CPC. The principle of *moffusil* pleadings which was invoked by the Privy Council with respect to the Courts in India, though ought not to have continued to apply but unfortunately continues to apply till date. The deficiency in language used by advocates while drafting a plaint, if found to be in substance conveying what is required to be conveyed, cannot be a ground for penalising the litigant.

7. The counsel for the petitioner/defendant has then referred to ***Santosh Kumar Vs. Bhai Mool Singh*** AIR 1958 SC 321 to contend that the discretion exercised in granting leave to defend has to be applied on settled principles of law and not arbitrarily. Reliance is also placed on ***Mechelec Engineers & Manufacturers Vs. Basic Equipment Corporation*** (1976) 4 SCC 687.

8. The reliance placed on the latter of the aforesaid judgments is in ignorance of the same having been overruled in ***IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd.*** (2017) 1 SCC 568. Owing to the same, reliance on ***Santosh Kumar*** supra is also misconceived.

9. Else, the counsel for the petitioner/defendant admits of issuance of the cheques. On enquiry of the reason therefor, it is stated that the cheques were issued for obtaining an insurance policy. On further enquiry as to why for payment for a premium of the insurance policy as many as six cheques were

issued, it is stated that the petitioner/defendant also desired a loan on the policy.

10. The aforesaid is not found to be normal human conduct in such transactions. The question of applying for loan, even before the insurance policy had been issued, would not arise. No error can thus be found with the order impugned.

11. The counsel for the petitioner has then contended that the respondent/plaintiff had also filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 which has been dismissed.

12. The same cannot be a reason for grant of unconditional leave to defend particularly when issuance of the cheques is not disputed and the reason therefor given in defence does not at least at this stage inspire confidence.

13. I may notice that though the suit is for recovery of a total Rs.5,27,000/- but the learned District Judge has directed the petitioner/defendant to deposit less than 50% of the principal amount by way of a Fixed Deposit Receipt (FDR) i.e. Rs.2 lakhs only.

14. There is thus no merit in the petition. The same is dismissed. The petitioner/defendant is granted time till 28th November, 2017 to make up the deficient deposit in terms of the impugned order, failing which the consequences shall follow.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 16, 2017/bs..
CM(M) 1357/2016

Page 3 of 3