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

\+ CM(M) 1377/2016 & CM Nos.47823-47824/2016

ARUN KUMAR ..... Petitioner

Through Mr.P.D. Gupta, Sr.Advocate with Mr.Abhishek Gupta, Advocate

versus

YOGENDER SINGH PANWAR @ SONU ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

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

% 18.01.2017

<u>CM No.47824/2016</u> *(exemption)*

Allowed subject to all just exceptions.

<u>CM(M) No.1377/2016 & CM No.47823/2016</u> *(stay)*

1. The petitioner is aggrieved by order dated 06.12.2016 by which a suit filed by the petitioner was not treated as a suit under Order 37 CPC.

2. The learned senior counsel appearing for the petitioner has taken me through the plaint and has submitted that on 04.02.2015 the respondent towards the repayment of the loan amount advanced to him by the plaintiff along with interest accrued thereon had tendered two cheques of Rs.4 lac and 6 lac, respectively. These cheques when presented, the same were returned unpaid with the remarks "Account Closed". He submits that as the cheques have been given, the suit is covered under Order 37 of the CPC.

3. A perusal of the impugned order shows that there is no reference to

the said cheques. The trial court has merely come to the conclusion that there is no proof of disbursement of the amount and hence declined to consider the suit under Order 37 of the CPC.

4. Order 37 Rule 1(2) & 2 CPC reads as follows:-

> "**37(1) Courts and classes of suits to which the Order is to apply.-**
> (2) Subject to the provisions of sub-rule (1), the order applies to the following classes of Suits, namely:
> (a) suit upon bills of exchange, hundies and promissory notes;
> (b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest arising-
> (i) on a written contract; or
> (ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt(other than a penalty; or
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> (iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.
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> (**2) Institution of summary Suits.-** (1) A suit, to which this Order applies, may, it the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,—
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> (a) a specific averment to the effect that the suit is filed under this Order;
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> (b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and
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> (c) the following inscription, immediately below the number of the suit in the title of the suit, namely:—
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> (Under Order XXXVII of the Code of Civil Procedure, 1908)".
>
> (2) The summons of the suit shall be in form No. 4 in Appendix B or in such other Form as may , from time to time, be prescribed.
>
> (3) The defendant shall not defend the suit referred to in sub-rule

(1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith."

5. Hence, all the suits which are for money recoverable on a written contract or on a bill of exchange, hundies or a promissory note are subject matter of a summary suit under Order 37 CPC. Perusal of the plaint shows that it is the case of the petitioner that the respondent towards repayment of the loan amount issued two cheques from his bank account which were duly signed by him. The said cheques were presented by the petitioner through its banker and the same were returned unpaid with the remarks "Account Closed". Further, the petitioner had filed a criminal complaint /s 138 of The Negotiable Instruments Act which is pending adjudication in the trial court. In the said case, bailable warrants were issued against the respondent but he has still not appeared till date on account of which the present suit is being filed.

6. For the purpose of consideration as to whether the suit would be under Order 37only the averments of the plaint are to be taken into account. As per the plaint, the defendant has defaulted and not paid the loan amount with accrued interest and hence a cause of action has arisen. Whether the petitioner ultimately succeeds is not relevant at this stage. Accordingly, the

present suit would be covered by the definition of a summary suit. The impugned order to that extent is modified. It is directed that the suit be registered as a summary suit under Order 37 CPC and summons be issued accordingly.

7. Petition and all the pending applications stand disposed of.

8. Dasti.

JAYANT NATH, J.

JANUARY 18, 2017/v