IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

SUMMONS FOR JUDGMENT NO.9 OF 2018
IN
COMMERCIAL SUMMARY SUIT NO.855 OF 2017

Parasram H. Bhojwani … Plaintiff
Versus
Pravinchand Sehgal And Others … Defendants

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Mr. S.C. Naidu a/w Mr. Aniketh Poojari I/b C.R. Naidu & Co. for the Plaintiff.
Mr. Ramesh Jain I/b S.M. Jain for the Defendants.

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CORAM : S.C. GUPTE, J.

DATE : 3 MAY 2018

P.C. :

. This Summons for Judgement is taken out in a Commercial Summary suit filed on bills of exchange a well as dishonored cheques. The Suit seeks a decree in the sum of about Rs.6.44 crores, comprising of principal amount of Rs.5 crores and interest.

2 The case of the Plaintiff is that the he extended financial assistance to the Defendants in the sum of Rs.4 crores. This sum was transferred by the Plaintiff to Defendant No.1 by RTGS. Defendant No.1 issued a cheque dated 10 March 2017 for Rs.4 crores towards repayment of this loan. Defendant No.1 also issued a bill of exchange on demand promising to pay the amount of cheque. This cheque was

dishonored upon presentation for payment by the drawee bank. The Plaintiff relies on the original bill of exchange and dishonored cheque as well as banker's return memo dated 30 May 2017. A further sum of Rs.2 crore was lent by the Plaintiff to Defendant No.1 on 1 February 2017. Payment of this amount was also by RTGS. A cheque of Rs.2 crore dated 9 February 2017 was issued by Defendant No.1 towards repayment of this loan. Defendant No.1 executed similar bill of exchange on demand for repayment. Even this cheque was dishonored upon presentation for payment to the drawee bank. The Plaintiff relies on the bill of exchange and dishonored cheque as well as banker's return memo dated 10 March 2017. On 20 April 2017, Defendant No.1 repaid sum of Rs.1 crore by remitting the same vide RTGS to the Plaintiff's account. After credit being given for this payment, a sum of Rs.1 crore is still outstanding against the loan of Rs.2 crore referred to above. Towards repayment of this sum, a cheque of Rs.1 crore was issued by Defendant No.1 on 4 May 2017 to the Plaintiff. This cheque was dishonored upon presentation for payment to the drawee bank. The Plaintiff's relies on dishonored cheque and banker's return memo in connection therewith. In the premises, the Plaintiff has filed the present Suit for recovery of the principal amount of Rs.4 crore towards the first loan and Rs.1 crore towards the second loan, along with interest under the Negotiation Instruments Act.

3 Defendant No.1 seeks leave to defend by filing a reply to the summons for judgement. The chief defences of Defendant No.1 are as follows : - (i) the bills of exchange have been insufficiently stamped and hence not admissible in evidence; (ii) the cheques were issued as and by

way of security and not towards repayment of the amount lent; (iii) the Plaintiff, who is a moneylender within the meaning of the Maharashtra Money-Lending (Regulation) Act, 2014, does not possess a valid money lending licence and hence, under Section 13 of that Act, no decree can be passed in favour of the Plaintiff; (iv) there is no agreement between the parties to pay any interest; and (v) Defendant No.2 has been mis-joined as a party to the suit, the suit not being maintainable against Defendant No.2.

4 Insofar as the defence of insufficient stamp is concerned, it is to be noted that the suit bills of exchange are effectively payable on demand and are accordingly not required to be stamped under the Indian Stamp Act. The suit bills of exchange are payable on particular dates respectively mentioned therein. Bills of exchange payable on particular dates come within the ambit of Section 2(3)(b) of the Indian Stamp Act as they constitute order for payment of a sum of money at a stated period. Our Court, in the case of **Antewerpse Diamant Bank n.v. Vs. M/s Kamal & Company**[1], considered such bill of exchange. The bill of exchange in that particular case was payable on a particular date. The argument before the Court was that this bill of exchange is payable otherwise than on demand. Our Court held that a bill of exchange payable on a particular date constitutes "an order for the payment of any sum of money..... at any other stated period"; payment on a single day would also be included in the expression "stated period", the expression not being confined to multiple dates over a period. Such bill of exchange is thus a

1 SJ No.1203/99 in S.S. No.3297/99

bill of exchange payable on demand under Section 2(3)(b) of the Indian Stamp Act and hence not liable to stamp duty. The question is thus no longer *res integra* and does not give any rise to any plausible defence.

5 As for the defence that cheques were issued as and by way of security, the same is merely required to be stated to be rejected. If cheques were issued as security, they must by definition be realized as security in the event the promised payment does not come through. Thus, there is no statable defence in this behalf.

6 The main defence is under the Maharashtra Money-Lending (Regulation) Act, 2014. It is submitted that the Plaintiff is a moneylender and since he does not possess a valid money lending licence, under Section 13 of that Act, no decree can be passed in favour of the Plaintiff in this behalf. Apart from the fact that there is no credible case of the Plaintiff carrying on money lending business so as to attract Section 13, it is pertinent to note that the suit is not for recovery of any loan. The suit is based on negotiable instruments, which are issued towards repayment of loans. Upon issuance of a negotiable instrument, the original liability to repay the loan is substituted by the liability to honour the negotiable instrument. Such liability, which arises under Section 30 of the Negotiable Instruments Act, is independent of the liability to repay the loan. The consideration for issuance of the bill of exchange can well come from a moneylender who does not possess any licence. The consideration is not bad for that reason.

7 Insofar as the principal amounts under the negotiable instruments are concerned, there is practically no defence. Defendant No.1 merely objects to payment of interest. Merely because interest claimed is objected to, unconditional leave to defend cannot be granted. Our Court in the case of **SICOM Ltd. Vs. Prashant S. Tanna**[2] has considered this aspect. It is permissible to the Court to grant various reliefs in a case when the contest is merely to payment of interest. It is permissible to allow the Plaintiff to abandon or give up a part of his claim including the claim of interest unilaterally so as to pass a decree for a part of the claim and grant unconditional leave to defend in respect of the balance amount including interest. It is permissible even to grant conditional leave to defend in respect of part of the claim and unconditional leave to defend the rest of the claim including the claim for interest. In the present case, interest can be granted from the date of the dishonor of the negotiable instruments under Section 80 of the Negotiable Instruments Act.

8 Mis-joinder of a party is no defence either. If there is no case proved against Defendant No.2 or if there any probable defence available to the particular defendant, unconditional leave can always be granted to him. The other defendants, who do not have any plausible or probable defence to offer, will not get unconditional leave to defend on that ground. In the present case, insofar as Defendant No.1 is concerned, he is the drawer of the bills of exchange as well as the dishonored cheques, whilst Defendant No.3 is the acceptor of the bills of exchange. There is no plausible defence raised by them. As far as

2 AIR 2004 Bombay 186

Defendant No.2 is concerned, unconditional leave to defend deserves to be granted to him.

9 In the premises, the following order is passed :-

: **O R D E R** :

(i) There will be a decree to the sum of Rs.5 crores, jointly and severally against Defendant Nos.1 and 3. This amount shall carry interest at the rate of 18 per cent per annum from the respective dates of dishonor of the suit cheques and till the filing of the Suit and thereafter *pendente lite* and post decree;

(ii) Unconditional leave to defend is granted to Defendant No.2;

(iii) Written statement to be filed by Defendant No.2 within four weeks from today;

(iv) Place the Suit for directions against Defendant No.2 after four weeks;

(v) The Summons for Judgment is disposed of.

(S.C. GUPTE, J.)