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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 101 OF 2018
IN
COMM SUMMARY SUIT NO. 424 OF 2018**

Bipin Vazirani ...Plaintiff
Versus
V Raheja Design Construction Private Limited & ...Defendants
Anr

Mr Zal Andhyarujina, *with Mr Aashish Agarwal & A Patel, i/b AVP Partners, for the Plaintiff.*
Mr Dinyar Madon, Senior Advocate, *with Mr Shrikant V Doijode & Ms Rashne Mulla-Feroze, i/b Doijode Associates, for the Defendants.*
Mr Vishal Manghnani, *present.*

CORAM: G.S. PATEL, J
DATED: 12th December 2018

PC:-

1. Heard.
2. The Suit is filed under the provisions of Order XXXVII Rule 2 of the Code of Civil Procedure 1908 (“CPC”). There are two Defendants. Mr Andhyarujina for the Plaintiff on instructions of Mr Vishal Manghnani who is present in Court seeks leave to delete the name of the 2nd Defendant and to withdraw the Suit

unconditionally against the 2nd Defendant. Leave granted. The Suit is dismissed as unconditionally withdrawn against 2nd Defendant.

3. As against original 1st Defendant, now the only Defendant, the suit is on the basis that there were certain antecedent transactions between the Plaintiff and 1st Defendant in the principal amount of Rs.22.10 crores between the years 2011 and 2013, this being the amount lent by the Plaintiff against the Defendant. In repayment of the debt, the Defendant issued two post-dated cheques on 22nd December 2014. Both were drawn on the Standard Chartered Bank, Santacruz (West). The first was no.007602 dated 31st March 2015 in the amount of Rs.22,99,50,500/-. This was in repayment of the principal amount and part of the accumulated simple interest at the agreed rate of 18% per annum. The second cheque no.007627, also post-dated to 31st March 2015 and drawn on the same bank, was in the sum of Rs.93,12,996/- for interest computed at the same rate, 18% per annum simple interest on the principal amount of Rs.22.10 crores. Paragraph 15 of the Plaint says that the cheques were presented on 9th June 2015. Both cheques were dishonoured and returned unpaid. The reason for dishonour was that there were insufficient funds in the bank accounts on which the two cheques were drawn. Copies of the return memos are annexed.

4. By an amendment effected on 24th September 2018, the Plaintiff incorporated or substituted the particulars of claim at Exhibit "S" at page 71. This makes it clear that the entire case against the Defendants is founded on, and only on, the dishonoured cheques. Interest is calculated from the date of dishonour and the

amounts claimed, exclusive of the further claim for interest, are on face values of the two cheques. Indeed the Plaintiff has, in his claim for subsequent interest, calculated interest on the amount of the first cheque of Rs.22,99,50,500/- but not on the dishonoured second cheque which was for interest alone.

5. The Writ of Summons having been served, both Defendants entered appearance. Both Defendants as originally arrayed entered appearance and the Plaintiff filed the present Summons for Judgment. The Defendants filed an Affidavit in Reply and there is also a Rejoinder.

6. Leaving aside Mr Madon's first submission that in a Summary Suit there can be no claim "for further and other reliefs" and therefore both Defendants should be granted unconditional leave on that ground, an argument that seems to me to be one of desperation rather than substance, the other point that he urges is that these were money lending transactions. I cannot agree. The law in this regard is well settled. I had occasion to consider this law recently in *Mahesh P Raheja & Ors v Base Industries Group & Anr*¹ in which I considered several decisions of the Supreme Court and of this Court.

7. In that decision I considered the settled law on the subject including amendments to the Money Lending Act and the interpretation of the expressions 'loan', 'money lender', 'business of money lending', and, in particular how such a defence could be

1 MANU/MH/2462/2018.

raised. In paragraph 36 of the *Base Industries Group* decision I culled out propositions that seemed to me to emerge from that discussion:

"36. From this discussion, the following propositions emerge:

(a) Not every loan is axiomatically a money-lending transaction for the purposes of the 1946 or the 2014 Acts. There is no such presumption in law.

(b) It is doing of the 'business of money-lending' that attracts the provisions of the statute. In interpreting the phrase, the correct emphasis is on the word 'business,' not 'money-lending.' It is the word 'business,' and not the expression 'money-lending,' that is determinative. Simply put, every instance of lending money is not money-lending. Not every lender is a Shylock.

(c) To constitute 'business,' a single isolated instance does not, and even several isolated stray instances do not, constitute 'the business of money-lending.' To be engaged in the 'business of money-lending,' the activity must be systematic, regular, repetitive, and continuous, and must generate an appreciable revenue. The fact that the borrower is a stranger to the lender does not on its own make the latter a 'money-lender.'

(d) A loan recovery action is not barred merely because there is a loan. It has to be shown that the loan was part of 'the business of money-lending.'

(e) A plaintiff seeking a recovery of a loan is not required to show that his suit is *not* barred by the Money Lenders Act. It is always for the defendant who puts up money-lending as a defence to show that the transaction is forbidden by the Money Lenders Act."

8. The transactions in question in *Base Industries* (and also in case of *Ashok Commercial Enterprises & Anr v Parekh Aluminex Ltd*,² to which I referred in *Base Industries*) stand on a different footing from the present suit. This action is altogether simpler because it is focused narrowly on the dishonour of the two cheques admittedly issued by the Defendant. That, as I have held, is exempted from the purview of the Money Lending Act, and therefore the bar of that Act cannot apply to a transaction such as this.

9. In that view of the matter there is absolutely no defence whatsoever to the Suit.

10. The Summons for Judgment is made absolute in terms of prayer clause (a) but with further interest from the date of the Suit at the rate of 12% per annum simple interest until payment or realisation. Interest after the date of the institution of the suit will be calculated separately on the face values of the two cheques. A word of explanation is necessary. Mr Andhyarujina does submit that since interest was paid at 18% and this is demonstrated, therefore there is an agreement to make payment at 18% per annum. That may be true, but I believe it is settled that the Court should not be unreasonable in awarding post-suit interest. I bear in mind that the suit is filed in the Commercial Division of this Court under the Commercial Courts Act 2015, in what is described as the commercial capital of the nation. A rate of 12% per annum post-suit simple interest is not in my view unreasonable.

2 2014 SCC OnLine Bom 4681.

11. Lastly there remains a question of costs under Section 35 of the Code of Civil Procedure 1908 (“CPC”) as amended by the Commercial Courts Act. This requires me to award costs that are reasonable including litigation costs, and to give reasons if costs are *not* to be awarded. The amended Section says in terms that costs must be awarded to the successful party. Mr Andhyarujina tenders a statement of costs that is taken on record and marked “A1” for identification with today’s date. This includes amounts towards court fees, legal fees and litigation expenses aggregating to Rs.11,95,000/-. I believe a figure of Rs.10 lakhs would be reasonable. There will be thus be a decree of costs against the Defendant in the amount of Rs. 10 lakhs, though without interest.

12. Certified copies of the two cheques along with the respective memos of dishonour are taken on record and marked in evidence as **Exhibit “P1”**.

13. The Summons for Judgment and the Summary Suit is disposed of in these terms.

14. Decree to be drawn expeditiously.

15. The original documents are to be returned upon these being substituted with authenticated photocopies in accordance with Rule 306 of the Bombay High Court Original Side Rules.

(G. S. PATEL, J)