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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL APPEAL NO.231 OF 2018
IN
SUMMONS FOR JUDGEMENT NO.74 OF 2017
IN
COMMERCIAL SUIT NO.78 OF 2017

with
Notice of Motion no.469 of 2018

Rajeev Goyal. ..Appellant
Vs.
Mr.Sanjay D.Gupta. ..Respondent

Mr.Anand Mishra i/b. Mr.Ashok M.Saraogi, for the Applicant/Appellant.

None for the Respondent.

CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.

DATE : 25th JUNE 2018

P.C.:

1. The appellant/defendant is in appeal assailing the order dated 5 March 2018 passed by the learned Single Judge on Summons for Judgment No.74 of 2017, taken out by the respondent/plaintiff in a Commercial Summary Suit filed under Order 37 of the Code of Civil Procedure. This suit is instituted, based on bills of exchange and

dishonoured cheques, for recovery of advance/friendly loan, granted to the appellant/defendant by the respondent/plaintiff for an amount of Rs.2,48,00,000/-

2. It is not in dispute that towards part payment of the said amount, the appellant/defendant had issued two cheques both dated 1 August 2013 for Rs.1.04 crores and Rs.1.34 crores respectively. These cheques were dishonoured when presented for payment. The respondent/plaintiff consequently initiated proceedings under Section 138 of the Negotiable Instruments Act. The respondent/plaintiff on this backdrop instituted the present suit seeking decree in the sum of Rs.2.70 crores inclusive of interest.

3. The appellant/defendant contested the summons for judgment. The defence inter alia being firstly that the advance as made by the respondent/plaintiff is improbable because it was stated to be lent in cash. Secondly, it was contended that as there were friendly relations between the father of the appellant/defendant and the respondent/plaintiff and it appeared that exploiting these relations, respondent/plaintiff had managed to procure the said cheques. Thirdly it was contended that there were doubts about the genuineness of these cheques on account of a rubber stamp as put by the bank on the

dishonoured cheques, which is stated was of a prior month, although the bank had clarified that by mistake different stamp was put on the cheques and the same was cancelled by an appropriate rubber stamp put on the cheques, when were presented for realisation on 3 March 2016. These cheques were dishonoured due to 'insufficient funds in the drawers' account. There was no other defence. Thus as can be seen the defences were too weak. The learned Counsel for the appellant in assailing the impugned order has reiterated the contentions which were urged before the learned Single Judge.

4. Having heard the learned Counsel for the appellant and having perused the record and the impugned order, we are not persuaded to accept any of the submissions as urged on behalf of the appellant. The issuance and the dishonour of the cheques is not in dispute. An advance as made in cash also cannot be an improbability. The learned Judge has observed that there is no bar in making a cash advance. We are also not shown any such bar. The bank has also certified that the cheques were presented for clearing and were dishonoured. Once the cheques were issued there was admission of a liability of payment by the appellant/defendant. Even otherwise there is not remotest material, much less any acceptable material of any fraud as played by the respondent/plaintiff in procuring the cheques. The

defences as urged on behalf of the appellant/defendant do not inspire any confidence to accept such defences as genuine or plausible and in any case as probable defences raising any triable issue. We are in complete agreement with the observations made in paragraph 4 of the impugned order that the defences on the face of it are vague and conveys no substantial or credible ground of defence. The suit was thus based on dishonoured cheques, and no material being brought before the Court to displace the case of the respondent/plaintiff on the liability which accrued on the dishonour of the cheques. The defences as urged on behalf of the appellant/defendant thus lacked any triable issue.

5. The learned Single Judge has nonetheless thought it appropriate to grant one opportunity and as observed by way of mercy to the appellant/defendant to make out a case at the trial and accordingly, granted leave to defend, the suit on condition of deposit of principal amount.

6. We find that no case is made out to interfere with the well considered order passed by the learned Single Judge. The appeal is without merit. It is accordingly dismissed. No costs.

[G.S. KULKARNI, J.] **[NARESH H. PATIL, J.]**