**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUMMONS FOR JUDGMENT NO. 64 OF 2016**
**IN**
**COMMERCIAL SUMMARY SUIT NO. 404 OF 2016**
**WITH**
**NOTICE OF MOTION NO. 375 OF 2017**

Motilal Laxmichand Salecha, HUF,
proprietor of M/s.Mala Investments ...Plaintiff/Applicant
Vs.
M/s.Mour Marbles Industries Pvt.Ltd. & Ors. ...Defendant

Mr.Pradeep J. Thorat with Abhijit Singh, Priyanka Lokhande I/b. Anil Mishra for Plaintiff.
Mr.Rohaan Cama I/b. G.B. Kedia for Defendants.

**CORAM : S.C. GUPTE, J.**

**DATE : 18 APRIL 2018**

**P.C. :**

This summons for judgment was taken out in a summary suit (now converted into a commercial summary suit) based on a dishonoured cheque. The amount of the cheque was Rs.1,86,78,313/-.

2 The short facts of the case may be noted as follows :

The Plaintiff claims to have advanced a loan on interest to the Defendants. The loan was advanced in several tranches. It is the case of the Plaintiff that the account between the parties was verified on 14 February 2016 when a sum of Rs.1,86,78,313/- was found to be due and payable by the Defendants to the Plaintiff. It is the Plaintiff case that to clear this outstanding, the Defendants issued a cheque for a sum of Rs.1,86,78,313/-.

The cheque was dishonoured by the drawee bank upon presentation for payment. The dishonour memo contains the remark “exceeds arrangement”. The Plaintiff has filed a criminal complaint under Section 138 of the Negotiable Instruments Act before the Metropolitan Magistrate’s court at Borivali, Mumbai. Simultaneously, the Plaintiff has proceeded to file the present suit praying for a decree in the sum of Rs.1,86,78,313/- together with interest.

3 Though the cheque itself is not disputed by the Defendants, the Defendants contend that by reason of the bar under Section 13 of the Maharashtra Money-Lending (Regulation) Act, 2014, no decree can be passed in the suit. It is submitted that based on this defence, the Defendants deserve an unconditional leave to defend. Learned Counsel for the Defendants, in the first place, submits that in the present case, the Plaintiff can very well be said to be carrying on business of money lending and the amount claimed in the suit can well be said to be part of a money lending transaction. It is submitted that for the whole of the relevant period during which the loans are said to be advanced, the Plaintiff did not hold a valid licence under the Act. Learned Counsel submits that no decree can be passed in favour of the Plaintiff accordingly, since at the time when the loan or any part thereof was lent, the Plaintiff did not hold the valid licence. It is submitted that the Plaintiff’s suit is in fact liable to be dismissed. Relying on the judgment of this court in the case of **Sha Damji Deraj vs. Megraj Bhikumchand and Co.**[1], it is submitted that in a suit filed under Order 37 of the CPC, to which the Act applies, the court is enjoined upon to grant unconditional leave to the defendant to defend the suit. Relying further on the cases of **Khyati Realtors Pvt. Ltd. vs. Zenal**

1 **1958 Bombay Law Reporter Vol.LX Page 1366**

**Construction Pvt. Ltd.**[2], **Popular Entertainment Network Ltd. vs. Mehul Kumar**[3], **Yallava Nagappa Kunchikorve vs. Kantabai Malli**[4] and **Motilal Prabhulalji Vyas vs. Jayantilal Tulsidas Thanawala**[5]**,** learned Counsel submits that this position is unassailable and no decree can be passed in favour of a money lender even if the Plaintiff's claim is backed by a cheque or a negotiable instrument, which is dishonoured upon presentation for payment.

4 There is no quarrel as such with the propositions of law canvassed by learned Counsel for the Defendants. The real question is, whether the suit relates to any loan or part thereof lent by a money lender? If the suit is filed for recovery of such loan or part thereof, undoubtedly Section 13 of the Act creates a bar against passing of a decree in favour of the money lender plaintiff without the court being satisfied that when the loan or any part thereof, to which the suit relates, was lent, the plaintiff had a valid licence under the Act. As is obvious from the reading of the plaint as a whole along with documents produced therewith, the present suit is not for recovery of a loan but for compensation to the Plaintiff as a holder of a bill of exchange or cheque on account of dishonour by the drawee or by the acceptor. Section 30 of the Negotiable Instruments Act provides for such liability. Under Section 30, the drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as provided in the Act. It is nobody's case that the drawer in the present case, namely, the Defendants, did not have due notice of dishonour in accordance with the

2 **Company Petition No.243/2012 decided on 29-8-2013**
3 **SJ 54-2013 in SS 3303-2008 decided on 14-7-2015**
4 **2012(3) Mh.L.J. 856**
5 **2008(6) Bom.C.R. 765**

provisions of the Negotiable Instruments Act. The Defendants, as drawers of the suit cheque , which by definition is nothing but a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand, are bound to compensate the holder of the cheque or bill of exchange, namely, the Plaintiff, in the event of its admitted dishonour by the drawee bank.

5 Merely because while narrating the facts of the case the grant of loan by the Plaintiff to the Defendants finds a mention, merely as a historical narration, it cannot be said that the suit is for recovery of loan. The moment payment is made by a cheque or another negotiable instrument of a loan, the liability under the loan is substituted by the liability to honour the cheque or the negotiable instrument, as the case may be. In fact, in a sense, the original liability to pay the loan is discharged by means of execution of the negotiable instrument. If this negotiable instrument is not honoured upon presentation for payment, a distinct and new liability arises under the provisions of the Negotiable Instruments Act. It is no answer then to a suit filed on such negotiable instrument that its holder is a money lender and that he did not hold a valid licence when he lent the original sum. The original loan lent merely forms part of a consideration for the negotiable instrument. There is nothing in law which prevents such consideration coming from a money lender, who does not hold a valid money lending licence. The consideration cannot be termed as an invalid consideration. Section 30 of the Act merely provides for a bar in passing a decree in favour of a money lender in a suit which relates to money lent and advanced and does not render the loan itself to be either illegal or invalid. Accordingly, there is no merit in this defence offered to the summons for judgment.

6 As for the defences, namely, that the monies, shown as lent and advanced by the Plaintiff to the Defendants in their books, are mere entries for the purposes of income tax or that the cheque was issued merely as a security, are merely required to be stated to be rejected. These are nothing but moonshine or nominal defences, which even do not merit a conditional leave to defend as of right.

7 In the premises, on the facts of the case, this court would be perfectly justified in making the summons for judgment absolute by passing a decree in favour of the Plaintiff. However, with a view to give one chance, only by way of mercy, to the Defendants to try and make out a case at the trial of the suit, this court is of the view that the Defendants may be allowed to defend the suit but on a condition of deposit of the entire principal amount of the dishonoured cheque into this court.

8 In the premises, the following order is passed :

(i) Defendant No.1 is granted leave to defend the suit on and subject to the condition of deposit in this court of a sum of Rs.1,86,78,313/- within a period of eight weeks from today;

(ii) The amount, if any, deposited by the Defendants may be invested by the Prothonotary & Senior Master of this court in Fixed Deposit/s of Nationalised Bank/s initially for a period of thirteen months and renewable thereafter from time to time and to abide by further orders that may be passed in the suit herein;

(iii) Defendant Nos.2 and 3 are granted unconditional leave to defend the suit. Their written statement may be filed within four weeks from today.

(iv) Defendant No.1 may file written statement within four weeks of deposit of the amount referred to in Clause (i) above;

(v) Place the suit for directions after ten weeks;

(vi) The summons for judgment is disposed of accordingly.

9 The Plaintiff has also taken out a notice of motion in the present suit for attachment before judgment under Order 38 Rule 5 of the CPC. In view of the fact that there is a conditional order today and also in view of the fact that there is no case made out that there is any concrete likelihood of the Defendants disposing of their property with a view to defeat a decree that may be passed in the present suit, this court is not inclined to grant any relief under Order 38 Rule 5 of the CPC. The notice of motion is accordingly dismissed.

**(S.C. GUPTE, J.)**