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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 73 OF 2018
IN
COMMERCIAL SUMMARY SUIT NO. 714 OF 2018**

Gannon Dunkerley & Co. Ltd.

... Plaintiff

vs.

Sangeeta Aviation Services Private Limited

... Defendant

Dr. A. Chandrachud i/b. Mr. Chirag K. Sancheti for the Plaintiff.

Mr. V. R. Surve for the Defendant.

CORAM : A.K. MENON, J.

DATE : 27st AUGUST, 2018

P. C.

1. The claim in the suit is a sum of Rs.1,21,71,243/- consisting of principal sum of Rs. 1,00,00,000/- and interest thereon @ 18% p.a. from 22nd March, 2017 till 30th June, 2018. The claim in the suit arises on account of two dishonoured cheques dated 14th May, 2018 each for a sum of Rs. 50,00,000/- .

2. It is the case of the plaintiff that at the request of the defendants, the plaintiff advanced a sum of Rs. 1,00,00,000/- to assist the defendants in their business. The amount of Rs. 1,00,00,000/- was advanced and was to be repaid with interest @ 18% p.a. on or before 14th May, 2018. A sum of Rs. 50,00,000/- was transferred through RTGS on 22nd March, 2017 and a further sum of Rs.50,00,000/- was transferred on 31st May, 2017. Against transfer of these amounts by RTGS the

defendant issued two post dated cheques both dated 14th May, 2018. Copies of the cheques are annexed at Exhibit “B” and “D” to the plaint. It is further stated that the defendant also executed Bills of exchange on 22nd March, 2017 and 31st May, 2017 for amounts of Rs. 50,00,000/- payable on demand. Notice of dishonour waived. However, the plaint proceeds on the basis that the cause of action is the dishonour of the cheques, the amounts of which exceeded arrangements.

3. It is submitted by Dr. Chandrachud, learned counsel for the plaintiff that in email correspondence annexed at Exhibit F-1 to F-4 the defendant company had not denied liability. The correspondence annexed reveals that there was some attempt on part of the defendant to contend that one of the directors who was responsible for the same was no longer with the company. On the other hand one of the directors of the respondent is seen to have agreed to make attempts to repay the amounts.

4. On behalf of the defendant an affidavit in reply has been filed in the summons for judgment. Affidavit of Mr. Varun Kakria, Manager who deposed with the authority of the board of directors of the respondent company has admitted receipt of the monies and the issuance of the cheques. But according to the deponent the cheques were undated and were to be deposited only after a period of 30 months from the dates on which the amounts of the two installments of Rs. 50,00,000/- each were remitted. In this background in paragraph 8 it is stated that the defendant company has “*definite program to make the repayment of the amounts credited by the Plaintiff Company, on the maturity of the repayment*”

term i.e. 30 months". This period of 30 months is said to have been orally agreed between the defendant company and the plaintiff. There is no mention in the affidavit as to the persons who had entered into any such oral agreement. This in my view is just an attempt to avoid liability. The defence is moonshine and in my view the defendant is not entitled to leave to defend the suit except on condition of securing the plaintiff claim. In the circumstances I pass the following order :

- (i) Defendant shall deposit in Court a sum of Rs. 1,21,71,243/- within a period of eight weeks from today.
- (ii) If such deposit is made, defendant will be entitled to file a written statement within the aforesaid period of 8 weeks.
- (iii) If the amount is deposited, the same shall be invested in a fixed deposit of a Nationalised Bank for one year and one day and shall be renewed from time to time till further orders.
- (iv) If a written statement is filed, parties shall exchange affidavit of documents within four weeks of filing written statement.
- (v) Discovery and inspection to be completed forthwith there after.
- (vi) List the suit for framing issues on 26th November, 2018.

(A.K. MENON, J.)

Rajeshwari
Ramesh
Pillai

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Rajeshwari
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