

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

SUMMONS FOR JUDGMENT NO.74 OF 2017

IN

COMMERCIAL SUIT NO.78 OF 2017

Saniya D. Gupta ... Applicant/Plaintiff

Versus

Rajeev Goyal ... Defendant

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Mr. Sandeep Bhagwat a/w Santoshkumar Dube I/b H.H. Nagi & Associates
for the Applicant/Plaintiff.

Mr. A.M. Saraogi a/w Mr. Sushil Upadhyay And Mr. Abhishek Gupta for
the Defendant.

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CORAM : S.C.GUPTE, J.

DATE : 5 MARCH 2018

ORDER :

. Heard learned Counsel for the parties.

2 This Summons for Judgment is taken out in a Summary Suit, which is based on bills of exchange and dishonoured cheques. It is the case of the Plaintiff that the Plaintiff had given financial assistance by way of a friendly loan to the Defendant in the sum of about Rs.2.48 crores. It is submitted that in consideration, two bills of exchange were issued by the Defendant in favour of the Plaintiff, one in the sum of about Rs.1.08 crores and other in the sum of about Rs.1.39 crores. It is further submitted by the Plaintiff that towards part repayment of the aforesaid amounts, the Defendant issued two cheques, both dated 1 August 2013, in the sum of

Rs.1.04 crores and about Rs.1.34 crores. It is the Plaintiff's case that these cheques were dishonoured upon presentation to the bank. The Plaintiff has initiated criminal proceedings under Section 138 of the Negotiable Instrument Act in respect of the dishonoured cheques. The Plaintiff relies on dishonoured cheques, memos of dishonour issued by the bank and the criminal proceedings. Based on these, the Plaintiff prays for a decree in the sum of about Rs.2.70 crores, which is said to be comprising of principal amount of about Rs.2.38 crores and interest on that amount.

3 In his reply to the Summons for Judgment, the Defendant disputes receipt of the amount of loan. The Defendant also disputes execution of the bills of exchange produced with the plaint. As for dishonoured cheques, the defence raised in the reply is that though these cheques bear the date '01/03/2016', "record of the bank would show that the said series of cheques were issued somewhere in the year 2008 or thereof". It is further submitted that "it seems that since the Plaintiff's father have been maintaining cordial relations with the Plaintiff hereinabove, somehow, they have managed to obtain the said cheques from the Defendant to the Plaintiff hereinabove by unlawful means." It is then submitted that "at no point of time, I had issued any cheques in favour of the Plaintiff hereabove and in view thereof, the contentions raised in the said para are false on the face of it." This is practically the only defence in so far the cheques are concerned. Besides this, there is one more insignificant allegation that the rubber stamp of the bank on the dishonoured cheques is of a prior month. This has already been explained by the Plaintiff by relying on the letter of Plaintiff's banker that though cheques were presented for deposit on 3 March 2016, there was a mistaken stamping with the date stamp of 3

February 2016 instead of 3 March 2016, which was merely an error. The bank has confirmed that the cheques were deposited on 3 March 2016 for realization and were dishonoured on that day due to insufficient funds in the drawers' account. Besides these bare statements in defence, the Defendant claims that "he is not required to disclose my defence", purportedly on the ground that the proceedings in respect of dishonoured cheques under Section 138 of the Negotiable Instruments Act are criminal proceedings, implying that a proper defence would be indicated in due course. At the hearing of the summons, learned Counsel for the Defendant submits the plaint shows the amount paid by the Plaintiff was in cash and that creates a suspicion about the transaction.

4 On these statements of defence, hardly any triable issue arises, atleast as far as the dishonoured cheques are concerned. The so called defence in the reply to the summons for judgment is, on the very face of it, entirely vague and conveys no substantial or credible ground of defence. The defence is nothing but bare words and even if one were to take all these bare words together, they do not make out any proper plea such as coercion, undue influence or fraud or otherwise explaining issuance of the cheques. Mere comment offered at the Bar that the amount is said to have been paid by the Plaintiff to the Defendant in cash is no defence. The case is on dishonoured cheques. A consideration said to be paid in cash is good consideration to support legality and validity of a cheque issued for refund of it. So also, consideration cannot be a matter of doubt simply because it is said to be paid in cash. The important point is that there is no statable case for issuance of the cheques, which were issued in fact and dishonoured in fact. The defence is, thus, practically moonshine or nominal. It does not

appear to be genuine or plausible, much less probable. In the premises, this Court would be perfectly justified in allowing the Summons for Judgment and and passing a decree. However, with a view to give one opportunity, by way of mercy, to the Defendant to make out a case at the trial, the Defendant may be given leave to defend the suit, but that must be on a condition of deposit of atleast the entire principal amount in Court.

5 Accordingly, the following order is passed :

- (i) The Defendant is granted leave to defend on and subject to the condition of his depositing in this Court a sum of Rs.2.48 crores within a period of six weeks from today;
- (ii) The amount, if any, deposited by the Defendant shall be invested by the Prothonotary & Senior Master of this Court in fixed deposit/s of the Nationalized Bank/s for a period of thirteen months, renewable thereafter from time to time and to abide by further orders that may be passed in the suit;
- (iii) Written statement to be filed by the Defendant within four weeks upon deposit as per clause -(i) above;
- (iv) Place the suit for directions after ten weeks;
- (v) The Summons for Judgment is disposed of.

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

6 It is made clear that the observations made in this order are for the purpose of deciding the Summons for Judgment. These shall not in any way influence the learned Magistrate hearing the criminal proceedings under Section 138 of N.I. Act, which are to be decided on their own merits.

(S.C. GUPTE, J.)