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

SUMMONS FOR JUDGMENT NO.95 OF 2016
IN
COMMERCIAL SUIT NO.584 OF 2016

Rupinder Singh Arora … Plaintiff

Versus

A to Z Ratail Limited & Ors. …. Defendants

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Ms. Ankita Singhania I/b Kanga & Co., for Plaintiff.
Mr. Rohaan Cama I/b M. V. Swar, for Defendant Nos. 2 to 5.

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CORAM : S.C.GUPTE, J.

DATE : 19 MARCH 2018

P.C. :

1. Heard learned Counsel for the parties.

2. This Summons for Judgment is taken out in a Summary Suit praying for a decree in the sum of about Rs.1.33 crores. This sum is said to include principal amount of about Rs.80.82 lakhs and rest interest.

3. The Plaintiff claims to be a businessman dealing in Strategic Planning in Real Estate, Capital Market, Energy and Power Sector. It is the case of the Plaintiff that Defendant No.1 and its Directors, i.e. Defendant Nos.2 and 3, approached the Plaintiff seeking a short term business finance to the tune of Rs.1 crore. The loan was granted under a loan agreement dated 18 September 2012. The agreement provided for interest at the rate of 11% per annum and repayment within 3 months. The repayment period

was extended at the request of Defendant No.1 against post dated cheques of Rs.1 crore towards repayment of the loan. The cheques were dishonored upon presentation for payment due to insufficient funds. After the Plaintiff sent a demand notice under Section 138 of the Negotiable Instruments Act, requests were made by Defendant No.1 for extension of time upon payment of penal interest. The Defendants went on rolling over the loan amount on oral assurances and against payment of penal interest for a few months. The Plaintiff thereafter complained to the local Police Station alleging cheating, forgery and criminal conspiracy. In the meantime, the Plaintiff also moved the Court of Metropolitan Magistrate with a criminal complaint under Section 138 of Negotiable Instruments Act. Thereupon, the Defendants approached to the Plaintiff for an amicable settlement on 12 October 2013. A settlement agreement was executed between the parties, under which the Defendants agreed to repay the loan amount of Rs.1 crore and Rs.3 lakhs for legal cost together with interest at the rate of 36% per annum in the manner stated therein. In view of the settlement agreement, the criminal proceedings between the parties were kept in abeyance for some time. During the pendency of the proceedings and during the subsistence of the settlement agreement, various amounts were paid by the Defendants to the Plaintiff. The total payment made by the Defendants to the Plaintiff aggregated to Rs.71,38,950/-. A sum of Rs.66,00,000/- from out of this amount was paid towards installments payable under the settlement agreement and the remaining amount of Rs.5,38,950/- was paid by way of penal interest for late payment of monthly installments as stipulated in clause 3 of the settlement agreement. The present Summary Suit is accordingly filed for recovery of a sum of Rs.80,82,356/-, together with TDS amounts which were deducted but not paid into the treasury and with interest at the rate of 36% per annum in accordance with particulars of claim annexed as Exhibit I to the Plaint.

4. The Defendants raise four defences at the hearing of the Summons for Judgment. Firstly, it is submitted that the Suit is overvalued just to bring it within the pecuniary jurisdiction of this Court. The second submission is that the settlement agreement was arrived at under coercion practised by the Plaintiff. Thirdly, it is submitted that as part of the settlement, the Defendants in fact have paid more amount to the Plaintiff than what is acknowledged by the Plaintiff. It is submitted that a sum of Rs.34 lakhs is only the amount due and payable by the Defendants to the Plaintiff under the settlement agreement. The last submission is that the present Suit is covered by Section 13 of the Maharashtra Money-Lending (Regulation) Act, 2014 and accordingly, no decree can be passed in favour of the Plaintiff-Money-Lender.

5. The argument of pecuniary jurisdiction offers no plausible defence. The Suit claim is over Rs.1 crore and it is only this Court which, can entertain the Suit. Pecuniary jurisdiction is a matter of initial jurisdiction of the Court, particularly for a Court of higher pecuniary jurisdiction. It is based on the claim made by the Plaintiff and not on the claim which is finally found to be due at the trial. If the claim found to be due at the trial is below the pecuniary threshold of the Court's jurisdiction, the Suit is nevertheless decreed and not dismissed on the ground of want of pecuniary jurisdiction.

6. The Defendants case of so called coercion is formulated in paragraph 4 of the reply to the Summons for Judgment. It is submitted that the Plaintiff threatened the Defendants to get them arrested and got the settlement agreement signed by them under pressure from Inspector of Police. On the basis of this solitary statement, the settlement agreement between the parties on the basis of which even relief was sought from the criminal court is sought to be faulted. A case of coercion cannot be raised in this fashion by means of a mere general statement. First of all, coercion as defined in the Section 15 of the Contract Act is "committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intension of causing any person to enter into an agreement." None of these ingredients is even suggested in the Defendant's reply. It is not in dispute that cheque issued by the Defendant No.1 was dishonored and as a result, a criminal prosecution was launched against the Defendants under Section 138 of the Negotiable Instruments Act. If the parties enter into settlement terms in the course of this prosecution and seek to keep the proceedings in abeyance pending completion of payment under such settlement terms, there is hardly any case of coercion. It is submitted that settlement was not arrived at in the course of the pending criminal prosecution under the Negotiable Instruments Act, but on a threatened case of cheating. Even here, the case of cheating is not something which is forbidden by the Indian Penal Code. If a case of cheating is proposed or filed alongwith prosecution under the Negotiable Instruments Act and whilst these proceedings are pending, settlement is arrived at between the parties, it does not satisfy the ingredients of coercion defined under Section 15 of the

Contract Act.

7. As for the defence that the Defendants have paid more amount than what is claimed by the Plaintiff, it is presumably on the footing that whatever amount is paid under the settlement agreement ought be adjusted towards the principal amount provided for therein. This argument is in the teeth of the specific stipulation of the settlement agreement. The agreement, in a schedule annexed to it, clearly provides for the manner in which amounts are to be appropriated towards principal and interest under the settlement agreement. Nothing is shown to the Court as to how the terms of this settlement agreement including its annexure providing for the manner of repayment are in any way breached by the appropriation made by the Plaintiff. There is not even a stateable case here.

8. As far as the last submission of the learned Counsel for the Defendant based on an alleged money-lending transaction is concerned, it is to be noticed that there is no credible case of application of Section 13 of the Maharashtra Money-Lending (Regulation) Act, 2014 to the present Suit. Under Section 13, the Court is enjoined upon not to pass a decree in favour of a money lender without being satisfied that at the time when loan was granted, the money lender held a valid license. First of all, there is no credible case that the Plaintiff is a money lender. Money lender is an individual who carries on business of money lending in the state. There is nothing to suggest that the Plaintiff was carrying on the business of money lending apart from the bare averment of the Defendants. Simply by a bare averment, the Defendants cannot make out a probable defence which should earn them an unconditional leave to defend. There is absolutely

nothing placed on record which would indicate that the Plaintiff is indeed a money lender. The Plaintiff himself in his plaint has taken a categorical stand that the Plaintiff carries on various businesses as stated therein. These business do not include money lending business. The defence neither appears to be genuine or bonafide nor probable in any true sense of the term.

9. Mr. Cama, learned Counsel for the Defendants, relies on judgments of this Court in the cases of **Bakhtwar Ice Factory vs. Chunilal Sonmal & Co.**[1], **Jatin Jashwantrai Bhagat vs. Dayaram Waghji Thaker & Ors.**[2] and **Kyati Realtors Pvt. Ltd. vs. M/s. Zenal Construction Pvt. Ltd.**[3]. In the case of **Bakhtwar Ice Factory**, admittedly the Plaintiffs were money lenders and held a licence under the Bombay Money Lenders Act. The case before the Court was that the Plaintiff had charged more interest than the maximum rate of interest permissible under Section 25 of that Act. In the premises, the Court made an observation to the effect that if the trial court were to find that there was slightest possibility of the money lender having charged more interest than the maximum rate permissible under Section 25, then obviously the Court would grant unconditional leave to the Defendants. These facts are completely different and have no bearing on the facts of the present case. As far as the judgment of our Court in **Jatin Jashwantrai Bhagat** is concerned, the facts on the basis of which the order of unconditional leave was passed are not apparent from the order. The order does not state it as a general preposition that whenever the defendant raises a defence of money lending on the part of the plaintiff, unconditional leave to defend must be granted. In fact, in that case, the

1 **1958 (0) AIJ-MH 108278**
2 **SJ-309-2006, dt.4.10.2006 (Coram: Mr. D. K. Deshmukh, J.)**
3 **CP-243-2012, dt.29.08.2013, (Coram: Mr. N. M. Jamdar, J.)**

Court went into the averments of the plaint and made an observation that it was not apparent from the averments made in the plaint that the transaction was not a money lending transaction. The judgment accordingly does not help the Defendants in the present case. As for the last case cited by the Defendants, namely, the case of **Khyati Realtors Pvt. Ltd.**, plaintiff here was said to be in the business of finance. The Court came to the conclusion that agreement in that case itself demonstrated that the petitioner before the Court was in the business of finance and his bank statements showed that he was habitually giving loans on interest and this was the main source of his income. These facts are also clearly distinguishable from the facts of our case.

10. Secondly and more importantly, it is to be noted that the original loan agreement is not the basis on which the suit claimed is formulated. The original loan agreement here comes in merely as part of a historical narration in which the Suit settlement agreement, on which the present claim is based, came to be arrived at. The settlement agreement is obviously arrived at pending a criminal prosecution. This prosecution was in connection with dishonored cheques. By this settlement agreement, the Defendants offered to repay the entire amount covered by the dishonored cheques over a stipulated period. This agreement was filed before the Criminal Court and on the basis of the agreement, criminal proceedings were kept in abeyance. Enforcement of such an agreement cannot be said to be decreeing of a money lending transaction.

11. The defences indicated by the Defendants, which are discussed above, do not appear to be either bonafide or genuine. Besides, even if one were to concede that these may be plausible defences, on which triable

issues can be said to have been raised, they are far from probable defences and do not merit an unconditional leave to defend to the Defendants. On these pleadings and material placed before the Court, this Court is of the view that it would be in interest of justice to allow the Defendants leave to defend the Suit but subject to their depositing in the Court the entire principal amount of the Suit claim.

12. Accordingly, the following order is passed:

ORDER

(i) The Defendants are granted leave to defend on and subject to the condition of depositing in Court an amount of Rs.80.82 lakhs within a period of six weeks from today.

(ii) The amount, if any, deposited by the Defendants shall be invested by Prothonotary and Senior Master in Fixed Deposit/s in Nationalised Bank/s, initially for a period of 13 months and renewable thereafter from time and to abide by further orders that may be passed in the Suit.

(iii) Defendants to file written statement within a period of four weeks of the payment preferred to in Clause (i) above.

13. Place the Suit for direction after 10 weeks.

14. Summons for Judgment is disposed of accordingly.

(S.C.GUPTE, J.)