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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA (OS) 48/2018

% ***Judgment dated 27<sup>th</sup> July, 2018***

ANJANI TECHNOPAST LTD & ORS. .... Appellants  
Through : Mr.Sushil K. Tekriwal, Adv.

versus

SHUBH GAUTAM ..... Respondent  
Through

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**  
**HON'BLE MR. JUSTICE P.S. TEJI**

**G.S. SISTANI, J (ORAL)**

1. Present appeal has been filed by the appellants under Section 96 of the Code of Civil Procedure, 1908, (hereinafter referred to as '*the Code*') read with Section 10 of Delhi High Court Act, 1966, against the judgment dated 11.01.2018 passed by a Single Judge of this Court in CS (OS) No.66/2016.
2. The brief facts of the case are that the respondents had instituted a suit under the provisions of Order XXXVII of the Code for recovery of Rs.4,38,00,617/- along with *pendente lite* and future interest at the rate of 24%, per annum. The suit was based on a loan agreement dated 24.2.2010 by which the appellants had borrowed Rs.2,50,00,000/- for a period of two months. Appellants no.2 and 3 in the suit, executed

deeds of guarantee to secure the loan. The appellants had also furnished post-dated cheques for the repayment of loan amount. The cheques on presentation were dishonoured with the remarks 'insufficient funds'. The respondent thereafter filed complaints under Sections 138, 141 and 142 of the Negotiable Instruments Act. Meanwhile, parties entered into an amicable settlement under which the appellant agreed to settle the matter with the respondent and offered to pay Rs.3,22,02,660/- along with *pendente lite* interest and future interest at the rate of 24%, per annum, till realization. Deed of compromise dated 31.8.2013 was executed and a post-dated cheque was handed over to the respondent, which was dishonoured with the remark 'insufficient fund'. This settlement was also not honoured by the appellants. As the settlement was not honoured, the respondent filed a suit for recovery under Order XXXVII of the Code of Civil Procedure for Rs.4,38,00,617/-. Even before the High Court, parties entered into a settlement on 23.12.2016. This settlement was also not honoured by the appellants. When the matter came up for hearing before the Single Judge on 10.1.2018, counsel for the appellants sought an adjournment. The matter was adjourned to 11.1.2018 making it clear that no further adjournment would be granted on the next date. On 11.01.2018, the suit was decreed in the absence of any application seeking leave to defend.

3. Learned counsel for the appellants submits that an application seeking leave to defend along with an application seeking condonation of delay was filed by the appellants but the same was not on record. It is contended that the learned Single Judge should have adjourned the

matter to enable the appellants to trace the application seeking leave to defend, which was filed by him as far back as on 5.12.2016 along with the application seeking condonation of delay in filing the application seeking leave to defend.

4. Counsel for the appellants next submits that the appellants were keen to resolve the matter amicably. Counsel has drawn the attention of the court to the orders dated 08.08.2016, 16.08.2016, 21.09.2016, 29.9.2016, 03.11.2016, 15.11.2016, 28.11.2016, 5.12.2016, 19.12.2016, 23.12.2016, 17.01.2017 and 10.01.2018 passed by the Joint Registrar from time to time, to explain the reasons as to why the application for leave to defend was not filed within the time allowed. The orders, sought to be relied upon, read as under:

“

**Order**  
**08.08.2016**

*Vakalatnama has been file don behalf of defendants no.1 and 2 on 4.08.2016 and the same is within prescribed period. Learned counsel for the defendants 1 and 2 submits that she will also file the vakalatnama on behalf of defendant no.2 and also accepts appearance on behalf of defendant no.3. Since service report of defendants 1 and 2 is still awaited and defendant no.1 has been served on 26.07.2016, a short delay in refiling the appearance is condoned subject to filing of an application for appearance within 3 days from today.*

*Relist for further proceedings on 16.08.2016.”*

“

**Order**  
**12.02.2016**

**IA No.9856/2016 (under Order XXXVII Rule 3 & 3(i) CPC by Defendant)**

*Heard. The present application has been filed by the defendants 1 to 3 for taking their appearance on record in terms of the order dated 08.08.2016. Accordingly their appearance is taken on record. The applicants have also sought one more relief in the present application i.e. for directing the plaintiff to provide complete set of paper book of the present suit with copy of the plaint and documents, IAs etc. Learned counsel for the plaintiff has supplied the same to learned counsel for the defendants today in the court. Accordingly, the application is allowed*

*Relist for further proceedings on 21.09.2016.”*

“

**Order**  
**21.08.2016**

*Vakalatnama has been on behalf of defendant no.3. All the defendants have entered appearance. However, the plaintiff has not taken the steps for issuance of summons for judgment.*

*Relist for further proceedings on 03.11.2016.”*

“

**Order**  
**29.09.2016**

**IA. 12147/2016 (under Order XXXVII Rule 3(4) (summons for Judgment) by the plaintiff**

*Issue notice to the defendants at the address mentioned in the memo of appearance.*

*List before the Joint Registrar on 03.11.2016, the date already fixed.*

*The Joint Registrar will place the matter before the Court in the first week of December 2016. Parties to ensure that all pleadings are completed before the next date of hearing before the Court.”*

“

**Order**  
**03.11.2016**

**IA No.12147/2016 (u/O XXXVII Rule 3(4) CPC by plaintiff)**

*The defendants remain un-served. However, learned counsel for the defendants has entered appearance.*

*At joint request the matter be sent to the Delhi High Court Mediation & Conciliation Centre on 07.11.2016 at 02:00 pm*

*Relist for reporting settlement if any on 15.11.2016. the short dates have been given in view of directions of the Hon'ble Court dated 29.09.2016.”*

“

**Order**  
**15.11.2016**

**IA No.12147/2016 (u/O XXXVII Rule 3(4) CPC by plaintiff)**

*The mediation efforts have failed. Learned counsel for the defendant is directed to file leave to defend application within 10 days from today.*

*Relist for proceedings on 28.11.2016.”*

“

**Order**  
**28.11.2016**

**IA No.12147/2016 (u/O XXXVII Rule 3(4) CPC by plaintiff)**

*Mediation report qua non-starter has been filed. Leave to defend has not been filed. However, learned counsel for the defendants submits that the parties are trying to explore the chances of settlement and are at the verge of a settlement.*

*Accordingly, relist for reporting settlement if any else for leave to defend on 05.12.2016.”*

“

**Order**  
**05.12.2016**

**IA No.12147/2016 filed by plaintiff**

*Joint request for adjournment is made by learned counsel for the parties as matter is likely to be settled.*

*List before concerned JR (Judicial) on 19.12.2016.”*

“

**Order**  
**19.12.2016**

**IA No.12147/2016 (u/O XXXVII Rule 3(4) CPC by plaintiff)**

*At request of learned counsel for the defendant, learned counsel for the plaintiff is agreeable to give time of four days from today to reconsider the proposed settlement. However, learned counsel for the defendant seeks some more time as the defendants are travelling.*

*Vide order dated 29.09.2016 of the Hon'ble Court this court had been directed to place the matter before the Hon'ble*

*Court in the first week of December, 2016. However, in the first week of December, 2016 i.e. 05.12.2016 when the matter was listed before this court, the undersigned was on leave. To prevent further delay, the matter be placed before the Hon'ble Court for further directions on 23.12.2016."*

“  
**Order**  
**23.12.2016**

*Parties have submitted that they have settled their dispute and seek time to file settlement deed.*

*List on 17.01.2017”*

“  
**Order**  
**17.01.2017**

*On request, list the matter on 10.01.2018.*

*Long date is given in view of the terms of the settlement”*

“  
**Order**  
**10.01.2018**

*At the request of learned counsel for the defendants, adjourned to 11<sup>th</sup> January, 2018.*

*It is made clear that no adjournment shall be granted on the next date of hearing.”*

5. Learned counsel for the appellants has placed reliance on the orders to show that in the order dated 21.9.2016 it was pointed out that defendant no.3 put in their appearance, thereafter summons for judgment was issued on 3.11.2016 and thereafter the matter was directed to be placed before the Delhi High Court Mediation and

Conciliation Centre vide order dated 3.11.2016. In the order dated 15.11.2016, the Joint Registrar noticed that the mediation efforts had failed and the appellants herein were directed to file leave to defend within ten days. The matter was again adjourned to enable the parties to explore the possibility of a settlement on 28.11.2016, 5.12.2016 and 19.12.2016.

6. Learned counsel for the appellants contends that on 23.12.2016, the Court noticed that the parties had entered into a settlement and the matter was adjourned to 17.1.2017 and then adjourned for almost one year to 10.1.2018 to enable the appellant to honour the terms of settlement. It is further contended that on account of the fact that serious efforts were being made to resolve the matter amicably, the appellants did not file the application for leave to defend within ten days of service of summons for judgment. Counsel further points out that the application for leave to defend was filed on 5.12.2016 but on account of talks of settlement the appellants were under the impression that his application for leave to defend and the application seeking condonation of delay was on Court record. Counsel further submits that in the absence of the application seeking leave to defend not being placed before the Judge, serious prejudice would be caused to the rights of the appellants. It is next contended that suit could not have been decreed as this court does not have the territorial jurisdiction to try and entertain the suit; the entire cause of action had taken place in the State of Uttar Pradesh; the Agreement between the parties had conferred exclusive jurisdiction to the Courts at Uttar Pradesh; and he has raised various objections and grounds in the application seeking

leave to defend, which would disentitle to the plaintiffs to the relief so granted. Additionally, it is contended that the appellants had raised a strong *bona fide* defence and they would have been entitled to unconditional leave to defend.

7. We have heard learned counsel for the appellant, carefully examined the orders, which have been extracted hereinabove.
8. In the present case, the appellants (defendants in the suit) were duly served with the summons for judgments and admittedly the appellant did not file the leave to defend within the prescribed period of ten days. Surprisingly, the Joint Registrar, without any application on behalf of the appellants granted further time beyond ten days prescribed to the defendants to file leave to defend by an order dated 15.11.2016. When the matter was listed on 28.11.2016, it was noticed that leave to defend had not been filed. No time was extended and thereafter the matter was adjourned from time to time to enable the parties to resolve the matter.
9. Learned counsel for the appellants has laboured hard to show that not only leave to defend application was filed on 5.12.2016 but even an application seeking condonation of delay was filed. Counsel further submits that leave to defend application should be taken on record subject to any terms, which the Court may deem appropriate and the decree be set aside and the matter be heard on merits.
10. We find no force in the submission made by counsel for the appellants. Reading of the plaint and the order sheets show that the present case is a perfect example of how a defaulting party has successfully delayed the hearing of a summary suit and made a

mockery of the law.

11. The provisions of the Order XXXVII of the Code are no doubt extremely stringent. The same are to be followed strictly, as the suits falling in this Chapter, as the heading suggests, are Summary suits, based on a written contract or dishonour of cheque etc.
12. It may be noted that the parties entered into a settlement on two occasions but the appellants did not comply with the terms of settlement. The matter was listed before the Single Judge on 10.1.2018, when the same was adjourned at the request of the counsel for the appellants, it was made clear that no adjournment would be granted on the next date. Despite an express direction having been given, no steps were taken by the counsel of the appellants to ensure that the applications were placed on record.
13. Additionally, we find that the parties had entered into an amicable settlement during the pendency of the suit by a Compromise Deed dated 23.12.2016 on the following terms:

*“10. Terms of Settlement:*

*10.1 It is agreed that the defendants having admitted their liability jointly and severally in the present suit for entire amount as prayed but for the purpose of this settlement they have agreed to pay to the plaintiff a sum of Rs.2,38,61,907/- (Rupees Two Crores Thirty Eight Lakhs Only) as full and final settlement amount against all claims of the plaintiff in this suit; whereas the plaintiff has also agreed and consented to accept aforesaid full and final settlement amount of Rs.2,38,61,907/- (Rupees Two Crores Thirty Eight Lakhs Sixty One Thousand Nine Hundred Seven Only) against his all claims which he raised in the present suit but subject to encashment of two*

*cheques mentioned hereunder and as will be given by the defendants to the plaintiff in furtherance of this settlement; if said cheques will return unpaid by any reason whatsoever, then full amount of the suit as prayed in the plaint, shall be decreed against all the defendants jointly and severally as admitted by the all defendants in earlier settlement/compromise dt. 31.08.2013.*

*10.2 It is further agreed that the defendants will pay aforesaid settlement amount of Rs.2,38,61,907/- (Rupees Two Crores Thirty Eight Lakhs Sixty One thousand Nine Hundred Seven Only) by way of following cheques as under:-*

*1. Cheque No.000130 for Rs.1,00,00,000/- (Rs. One Crore Only); dated 31<sup>st</sup> Dec. 2017.*

*2. Cheque No.000132 for Rs.1,38,61,907/- (Rs. One Crore thirty eight lacs sixty one thousand nine hundred seven Only); dated 31<sup>st</sup> Dec. 2017.*

*10.3 It is further agreed and undertaken by the all defendants that aforesaid cheques shall be honoured on their due dates on presentation; failing which it will be presumed and proved that defendants have not good intention to honour the cheques as was done in past.*

*10.4 It is further agreed by the defendants that they shall be liable jointly and severally for the entire amount of plaint as prayed for; in case aforesaid cheques will be returned unpaid; and also accordingly a decree will be drawn against all the defendants jointly and severally by this Hon'ble Court on the basis of Original Compromise dt. 31.08.2013 as prayed in this suit against all the defendants jointly and severally.*

(emphasis supplied)

14. Learned Single Judge, to ensure that the terms of settlement were complied with, adjourned the matter for almost one year although in

our view the suit should have been decreed as per the terms of settlement on the day the settlement was filed before the Court.

15. Be that as it may, even after the gap of more than one year the appellant neither honoured the terms of the settlement nor had the application seeking leave to defend listed for hearing. Resultantly the Single Judge was left with no options but to decree the suit.

16. Sequence of events narrated hereinabove would show the conduct of the appellants as to how the appellants have succeeded in delaying the matter, which is evident from the facts that the appellants did not fulfil their financial liability; the cheques issued by the appellants to secure the loan were dishonoured; the appellants thereafter entered into an amicable settlement with the respondent and offered to pay Rs.3,22,02,660/- along with *pendente lite* interest and future interest at the rate of 24%, per annum; deed of compromise was executed and again post-dated cheque was handed over by the appellant to the respondent, which was also dishonoured due to insufficient funds. Since the settlement was not honoured by the appellants, the respondent was forced to file a suit under the provisions of Order XXXVII of the Code. In the suit, the appellants again entered into a settlement with the respondent vide Compromise/Settlement deed dated 23.12.2016, and agreed to pay the sum of Rs.2,38,61,907/- by way of two post-dated cheques, which cheques were also dishonoured on account of insufficient funds.

17. We find no infirmity with the view taken by the Single Judge that in the absence of leave to defend objection, with regard to jurisdiction and the plaintiff being a money lender, could not have been

considered. Additionally, we are of the view that once the appellant had entered into a settlement with the plaintiff and no plea of jurisdiction was raised at that point of time, the appellant cannot be allowed to raise the same at this stage. There is no merit in the appeal, the same is dismissed with costs of Rs.25,000/-.

**G.S. SISTANI, J**

**P.S. TEJI, J**

**JULY 27, 2018**

msr

