$~13

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

Date of Decision : 14th September, 2018

\+ **CS (OS) 143/2014**

RAJINDER KUMAR TYAGI ..... Plaintiff

Through: Mr. Satyavan Kundalwal, Advocate. (M:9811580002)

versus

PREM NIJHARA & ANR. ..... Defendants

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

I.A. 11537/2016 (732 days delay in filing OA) and O.A. 178/2016

1. A perusal of the record shows that the Defendant No.2 has already filed the written statement, though the right was closed on 20th August, 2014. Since the written statement has already been filed and replication is also filed, the order dated 20th August, 2014 is recalled and written statement is taken on record. The delay in filing of the OA is condoned. O.A. is disposed of.

CS (OS) 143/2014

2. On the last date, Defendant No.1 appeared in person and sought an adjournment, which was granted subject to payment of costs of Rs.5,000/-. None has appeared for the Defendants today. Costs have also not been paid. The Defendants are proceeded *ex-parte*.

3. The present is a suit for recovery of Rs.2,40,67,000/- along with interest. The case of the Plaintiff is that the Plaintiff had, through common friends, given a loan to the Defendant No.2, both by way of cheques and

cash. As against the amounts advanced as loan by the Plaintiff, the Defendant No.1 issued five cheques, details of which are mentioned in paragraph 4 of the plaint:

CHEQUE NO.	***DATED***	***AMOUNT***
305164	*17.10.2009*	*Rs.17,00,000/-*
305165	*24.10.2009*	*Rs.17,00,000/-*
305166	*31.10.2009*	*Rs.17,00,000/-*
305167	*07.11.2009*	*Rs.10,00,000/-*
305168	*14.11.2009*	*Rs.07,50,000/-*

4. Since the Defendants did not honour the payment of these cheques, further cheques were issued by the Defendant No.2 for a sum of Rs.87 Lakhs, as detailed in paragraph 5 of the plaint.

CHEQUE NO.	***DATED***	***AMOUNT***
370371	*25.05.2010*	*Rs.20,00,000/-*
370372	*25.05.2010*	*Rs.20,00,000/-*
370373	*25.05.2010*	*Rs.20,00,000/-*
370374	*30.05.2010*	*Rs.05,00,000/-*
359235	*30.05.2010*	*Rs.22,00,000/-*

5. The said cheques were replaced by Defendant No.2 again with six other cheques as mentioned in paragraph 6 of the plaint, which are detailed as under:

CHEQUE NO.	***DATED***	***AMOUNT***
486293	*15.12.2010*	*Rs.20,00,000/-*
486294	*20.12.2010*	*Rs.20,00,000/-*

486295	*20.12.2010*	*Rs.28,00,000/-*
486296	*26.12.2010*	*Rs.22,00,000/-*
486297	*30.12.2010*	*Rs.15,00,000/-*
486298	*30.12.2010*	*Rs.12,40,000/-*

6. The Plaintiff, thereafter, filed a criminal complaint under Section 138 of the Negotiable Instruments Act, in respect of four cheques as mentioned in paragraph 11 of the plaint, details of which are extracted below:

CHEQUE NO.	***DATED***	***AMOUNT***
486294	*20.12.2010*	*Rs.20,00,000/-*
486295	*20.12.2010*	*Rs.28,00,000/-*
486296	*26.12.2010*	*Rs.22,00,000/-*
486298	*30.12.2010*	*Rs.12,40,000/-*

7. In respect of the cheque number 486297, it is averred by the Plaintiff, that there was some overwriting in the amount on the cheque, and the same could not be encashed when presented. Insofar as cheque number 486293 for a sum of Rs.20,00,000/- is concerned, the same was not presented by the Plaintiff on the assurance of the Defendants that the payment of the cheque would be made to him in cash. Thus, the complaint under Section 138 of the Negotiable Instruments Act, 1881 was made only in respect of the 4 cheques mentioned in paragraph 11 of the plaint. It is also averred in the Plaint that the Defendants forged a dissolution deed as also acknowledgements of the Plaintiff having received the amounts. Learned counsel for the Plaintiff submits that the said criminal complaint is still pending.

8. In the written statement, the stand of the Defendant No.2 is that the

amount, which was given by the Plaintiff, was invested in the company M/s. Supreme Ventures FZC and the same was not a loan. Allegations of forgery of the dissolution deed and the acknowledgments are denied. In respect of the two cheques of Rs.15,00,000/- and Rs.20,00,000/-, the allegations made in paragraph 7 of the plaint have been simply denied and no explanation has been offered by the Defendants. Issuance of the cheques, as mentioned in paragraphs 4 & 5 of the plaint, is however not denied. The relevant portion of the Written Statement reads as under:

> *"7. That the contents of para no.7 of the suit are wrong, false, misconceived and hence denied. It is specifically denied that in the second week of December, 2010 when the plaintiff intimated to the defendant no.1 that he is going to present the above cheques for encashment on their due dates. It is further specifically denied that the defendant no.1 requested to wait for another two months. It is further specifically denied that one cheque bearing No.486297 for Rs.15,00,000/- (Rupees Fifteen Lacs) was having a cutting in the amount in figures which was done by defendant no.2 intentionally so that the same could not be encashed when presented. It is further specifically denied that the cheque no.486293 for a sum of Rs.20,00,000/- could not be presented by the plaintiff second time due to false assurance of the defendant that the payment of cheque shall be made to him in cash. It is, however, submitted here that besides the present case the plaintiff has filed many other complaints against the defendants which includes four cases of N.I. Act much, got registered a F.I.R. against the defendants at Police Station C.R. Park, a complaint at P.A. Burari and a criminal complaint in the court of Ms. Aparna Swami M.M. Tis Hazari. It is further submitted that actually whatever amount given by the plaintiff was an investment in the company M/s*

> *Supreme Ventures FZC and not any kind of loan to the defendants as alleged by plaintiff. The defendants could not be held liable for any kind of losses accrued just due to the reason that the company could not work properly due to insufficiency of funds which was the ultimate result of the fact that the plaintiff had not invested the amount as agreed by him."*

The case of the Defendants is that the Plaintiff's investment was only to the tune of Rs.8 Lakhs, Rs.13 Lakhs and Rs.5 Lakhs and not as claimed in the plaint.

9. A perusal of paragraph 11 of the Plaint and the reply on merits in the written statement shows that the Defendants merely plead that the contents of paragraph 11 need no reply. The same are extracted below:

> *"11. That the contents of para no.11 of the suit need no reply"*

10. However, there is another reply on merits to paragraph 11, where the Defendant No.2 denies that he is to pay Rs.2,40,67,000/- to the Plaintiff, and has in fact already made payment of Rs.18 Lacs, after which there nothing outstanding which was left to be paid to the Plaintiffs. Paragraph 11of the reply on merits as under:

> *"11. That the contents of para no. 11 of the suit are wrong, false, misconceived and hence denied. It is specifically denied that the defendants are liable to pay Rs.1,17,40,000/- towards cheque amount along with Rs.1,23,27,000/- towards interest @ 3% per month from the date of issuance of the cheques till the filing of the present suit, totalling Rs.2,40,67,000/- (Rupees Two Crores Forty Lacs Sixty Seven Thousand only). It is, however, submitted here that the defendants have already returned the amount of Rs.18 Lacs which was actually invested by the plaintiff in the business to the*

plaintiff during the course of hearing of their anticipatory bail before the Court of Sh. V.K. Khanna, A.S.J., Saket, New Delhi on 26.02.2014 and now, nothing remains due towards the defendants nor the defendants are under any legal liabilities to return anything to the plaintiff."

11. The Plaintiffs, in the replication, responding to the aforementioned paragraph 11, stated that the amount of Rs.18 lacs was received by them as the same was ordered by the ASJ, Saket Court, before granting anticipatory bail to the Defendants and this amount was not towards any full and final repayment of any dues by the Defendants. The relevant extract of the same is as under:

> *"Para 11 of the written statement is wrong and denied as stated. It is submitted that the defendants are liable to pay Rs.1,17,40,000/- towards cheque amount alongwith Rs.1,23,27,000/- towards interest @ 3% per month from the date of the issuance of the cheques till the filing of the present suit totalling Rs.2,40,67,000/- (Rupees Two Crores Forty Lacs Sixty Seven Thousand only). It is submitted that the plaintiff has received only Rs.18 Lacs from the defendants without prejudice to his right as the same was ordered by the Hon'ble Court of Shri V.K. Khanna, ASJ, Saket, New Delhi on 26-02-2014 before granting anticipatory bail to the defendants. The said amount was not towards any full and final repayment and the defendants are liable to pay the balance of the suit amount. Corresponding para of the plaint is reaffirmed."*

12. Apart from this, since the cheques issued by the Defendants are themselves not denied, there appears to be no defence raised by the Defendants. Since the disbursement of the amount and the issuance of

cheques is admitted, no evidence is required to be led in the matter. As held in ***Everstone Capital Advisors Pvt. Ltd. & Anr. v Akansha Sharma & Ors., [CS(COMM.) 1028/2016, dated 17th July, 2018]***, in cases where the defendants are ex-parte, the formality of leading of ex-parte evidence can be dispensed with, if the matter can be disposed of on the basis of the record.

13. The pleadings also clearly show that the Defendants do not dispute the issuance of cheques and pendency of Section 138 complaints in respect thereof. The four cheques are admitted. The payment of Rs.18 lakhs is also not disputed. The suit is accordingly decreed against Defendant no.2, for the amounts due as per the amounts in cheque Nos.486294, 486295, 486296 & 486298 i.e., for a sum of Rs.82,40,000/- minus Rs.18,00,000/- which has been received by the Plaintiff i.e., for a sum of Rs.64,40,000/- along with simple interest @ 8% per annum.

14. Decree sheet be drawn in the above terms.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 14, 2018/*dk*