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

Reserved on : 3rd January, 2018

Date of decision : 31st January, 2018

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RFA 2/2016

AJANTA RAJ PROTEINS PVT LTD & ANR Appellants

Through : Mr. V.N. Chaturvedi, Advocate.
(M-9810280191)

versus

HIMANSHU FOODS PVT LTD Respondent

Through : Mr. Shalabh Gupta, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. Himanshu Foods Private Limited (*hereinafter*, 'Plaintiff') filed a suit for recovery of Rs.15,00,000/- under Order XXXVII of the Code of Civil Procedure, 1908 (*hereinafter*, 'CPC'). Ajanta Raj Proteins Pvt. Ltd. (*hereinafter*, 'Defendant') filed two applications for leave to defend under Order XXXVII Rule 3 and under Order VII Rule 11 CPC. The said applications were dismissed by the Trial court. Leave to defend was refused. The suit of the Plaintiff was decreed for a sum of Rs.15,00,000/- with costs and *pendente lite* and future interest @ 18% per annum.

Plaintiff's case

2. The Plaintiff claims to be a supplier of skimmed milk powder and allied products. The Defendants approached the Plaintiff for supply of the same. It was agreed that for the supplies made, invoices would be raised by

the Plaintiff and payments would be made either through cash or by cheque at the time of delivery of the goods by the Defendants. Orders were placed from time to time by the Defendants and supply of the skimmed milk powder was made by the Plaintiff. Accordingly, various invoices were raised by the Plaintiff and the receipt of the goods were duly acknowledged by the Defendants. The Plaintiff states that it was agreed between the parties that the payment would be made at the time of delivery of goods and in case of any delay, interest @ 18% per annum would be liable to be paid.

3. One such cheque issued for payment by the Defendant to the Plaintiff was Cheque No. 438786 for a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs) dated 21st November, 2010 drawn on Axis Bank Ltd. (*hereinafter*, '*Axis Bank*'). In view of certain supplies which were made and payments which were outstanding, the Plaintiff deposited the said cheque through its Banker-HDFC Bank Limited, Chandni Chowk Branch, Delhi (*hereinafter*, '*HDFC Bank*'). The same was dishonoured and received back by the Plaintiff with a cheque return memo dated 10th May, 2011 with the remarks '*Insufficient funds*'.

4. The Plaintiff issued a legal notice dated 24th May, 2011 through registered post but no reply was received. A complaint under Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter*, '*NI Act*') was filed on the ground that the Defendants have neglected to pay the outstanding sums due to the Plaintiff. Thus, the Plaintiff filed a suit for recovery. On the question of limitation, para No. 19 and 20 of the plaint is important and the same is set out herein below:

"19. That the present suit is within limitation of time as per the provisions of the Limitation Act. The

cheque in question was dishonoured on 10.05.2011 and the present suit has been filed before the expiry of 3 years time. Moreover, the plaintiff is maintaining a running account in its books of account. As per the said statement of account, the last transaction was made by the defendants on 06.12.2011 with the plaintiff company. Thus, the present suit is within limitation.

20. *That the cause of action for filing the present suit firstly arose in favour of the plaintiff and against the defendants on 10.05.2011 when the cheque issued by the defendants in favour of the plaintiff got dishonoured. The cause of action further arose on various occasions when the plaintiff sent several reminders to the defendants to make the payment and the defendants avoided to clear their dues. The cause of action further arose on 06.12.2011 when the last transaction was made by the defendants with the plaintiff. Since till date no payment has been made by the defendants to the plaintiff w.r.t. the cheque in question, the cause of action is still subsisting and continuing.”*

Defendant's case

5. In their leave to defend, the Defendants raised the following defences:
- (i) that the summons for judgment was issued only for a sum of Rs.4,09,089/- and not for a sum of Rs.15,00,000/-;
 - (ii) that the suit was beyond limitation as the period of limitation under Article 35 of the Limitation Act, 1963 (*hereinafter, 'Limitation Act'*) has to be construed from the date of the cheque and not from the date when the cheque is dishonoured;
 - (iii) the Defendants question the jurisdiction of the Trial court

on the ground that the cheque was issued in Agra and the Defendants were located in Agra;

- (iv) the payments made by the Defendants were not duly given credit by the Trial court. Their cheque dated 21st November, 2010 was only given as a security. The Defendants claimed that it had supplied dry milk worth Rs.8,60,000/- to the Plaintiff, for which the payment is yet to be received.

Trial court's judgment

6. The Trial court notes that the main issue raised by the parties related to the question of limitation. After noticing Article 35 of the Limitation Act, the Trial court held that the Plaintiff could not have come to the Court prior to the cheque having been dishonoured, inasmuch as, if the cheque had been encashed, no cause of action would have arisen. The Trial court relies upon Article 40 of the Limitation Act. The Trial court holds that the 'right to sue' arose only when the cheque was dishonoured.

7. The Trial court distinguishes the judgments cited by the Defendants and relies upon the decision of this court in ***Steel Authority of India v. Rohini Strips Ltd.*** (dated 17th August, 2007 in C.S.(OS) No. 1252/2003) (hereinafter, 'Steel Authority') wherein, a learned Single Judge of this Court held that upon dishonour of the cheque, the period of limitation would start from the date when the cheques are returned to the Plaintiff unpaid. Insofar as the question of payments having already been made, as alleged by the Defendants, are concerned, the Trial court notes that there was not even a single document showing payment by the Defendants or the supply of

powder to the Plaintiff. The Trial court observes as under:

“31. On merits the sole defence raised seems to be quite half hearted, firstly that the cheque in question was given only by way of security, and secondly that payment had already been made against the cheque in question, particulars of three cheques have been mentioned, but surprisingly the application has not been accompanied by even a single document showing payment from the side of defendant.

32. Defendant could have filed his bank entries to show the payment already made. Apart from this, the defendant even tried to raise the case that infact, even defendant company had been supplying milk powder to plaintiff, and it is plaintiff who had not paid their dues to the extent of Rs.8,60,000/-. Though all this is mentioned in para 8 of this application, surprisingly, even this contention is not supported by even a single document. Neither copies of invoices vide which product alleged to have been supplied by plaintiff have been filed, or even the bank entries showing the payment vide three cheques mentioned in para 8 of this application have been filed.”

8. The Trial court held that the Defendants ought to have filed some supporting documents to show that their defence was not an eye wash. The Trial court also noted that if Defendants' claim for a sum of Rs.8,60,000/- was due from the Plaintiff, there is not even a notice sent to the Plaintiff seeking recovery of the said amount much less a suit for recovery being filed. Due to all these circumstances, the Trial court held in favour of the Plaintiff and decreed the suit.

Analysis and Findings

9. Order XXXVII of the CPC lays down procedure for summary trials

which are meant for quick adjudication of commercial transactions. The said procedure requires the parties to act with utmost diligence and alacrity. Once the suit under Order XXXVII of the CPC is filed and summons is issued, the Defendant is expected to file a memo of appearance within 10 days of the service of the summons. The Plaintiff has to then file a summons for judgment, which would be returnable in not less than 10 days. If the Defendant files a leave to defend, the court after examining the case, may pass any of the following orders:

- (i) dismiss the leave to defend—and thereby decree the suit;
- (ii) grant conditional leave to defend upon such conditions as the court deems fit;
- (iii) grant unconditional leave to defend.

10. The question as to whether leave to defend is to be granted or not depends upon the case set up by the Defendant, both by way of pleadings as well as documents. The Court takes an overall view of the matter at that stage, which is clearly prior to the trial of the suit, to determine whether the Defendant has a triable case or not. Order XXXVII Rule 3 of the CPC uses the terminology that the court would not refuse leave to defend unless “*the facts disclosed by the Defendant do not communicate that he has a substantial defence to raise or the defence intended to be put up by the Defendant is frivolous or vexatious*”. Thus, the proviso to Order XXXVII Rule 3 of the CPC is worded in a double negative and the Defendant has to show a substantial defence which is not frivolous or vexatious.

11. While granting conditional leave to defend, the Court can also insist on the amount admitted by the Defendant, to be deposited or furnishing of security by the Defendant during the pendency of the trial. The principles

governing suits under Order XXXVII of the CPC are well settled and need no repetition. The Supreme Court in *IDBI Trusteeship Services Ltd. v. Hubtown Ltd.* AIR 2016 SC 5321, while deciding the scope of Order XXXVII Rule 3 of the CPC held as under:

“18. Accordingly, the principles stated in paragraph 8 of Mechelec's case will now stand superseded, given the amendment of Order XXXVII Rule 3, and the binding decision of four judges in Milkhiram's case, as follows:

- a) If the Defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the Plaintiff is not entitled to leave to sign judgment, and the Defendant is entitled to unconditional leave to defend the suit;*
- b) if the Defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the Plaintiff is not entitled to sign judgment, and the Defendant is ordinarily entitled to unconditional leave to defend;*
- c) even if the Defendant raises triable issues, if a doubt is left with the trial judge about the Defendant's good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security;*
- d) if the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security.*

As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

e) if the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the Plaintiff is entitled to judgment forthwith;

f) if any part of the amount claimed by the Plaintiff is admitted by the Defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the Defendant in court.”

12. Coming to the facts of the present case, the Defendant has raised four preliminary defences, each of which are dealt with hereunder:

(i) Error in the summons by the Trial court

13. This objection is not directed against the Plaintiff but in fact is directed against the Registry of the Trial court, which may have erroneously issued a summons for judgment, mentioning the wrong amount. The same cannot, in any manner, be construed as an error on the part of the Plaintiff or an objection that would entitle the Defendants to leave to defend.

14. The error by the Registry cannot provide a defence to the Defendants to steal a march on the Plaintiff. This plea is frivolous to say the least. The Defendants were already well aware of the amount for which the Plaintiff had filed the suit as the initial summons in the suit issued on 4th July, 2014, clearly mentions the sum of Rs. 15,00,000/-. The Trial court in para 7

records that the wrong mentioning of the amount was merely a typographical error in the summons, which fact was conceded by the Defendants. Thus, this ground raised by the Defendants is not tenable.

(ii) Jurisdiction

15. The Plaintiff is located in Delhi and the delivery of the goods was made to the Defendants from the Plaintiff's Delhi office. The cheques which were issued by the Defendants to the Plaintiff were presented in Delhi. Even, the cheque of Rs. 15,00,000/- was presented in Delhi. Thus, under Section 20(c) of the CPC, part of the cause of action has arisen in Delhi.

(iii) Limitation

16. The date of the cheque is 21st November, 2010. The return memo of HDFC Bank which quoted the remarks of Axis Bank is dated 10th May, 2011. The cheque issued by the Defendants was drawn on Axis Bank. The suit has been instituted on 8th May, 2014. Thus, it is filed within three years of the date of dishonour of the cheque, but beyond three years from the date of cheque. The Defendant argues that the limitation has to be construed from the date of the cheque and not the date of dishonour.

17. The Defendants place heavy reliance on the judgment of the learned Single Judge of this court in ***Empire Home Appliances Pvt. Ltd. v. Suraj Enterprises*** (dated 3rd May, 2016 in RFA 208/2016) (hereinafter, 'Empire Home Appliances'). In the said case, the Court held as under:

“27. In the aforesaid light, there cannot be said to be any inconsistency in the judgments relied upon by the counsel for the appellant/plaintiff and the judgments to which his attention was drawn by me.

Unlike the present case where the appellant/ plaintiff to bring the suit within limitation has to necessarily rely to Section 18 and / or 19 for extension of limitation, Steel Authority of India Ltd. supra was not concerned therewith; that was a case of a suit for recovery of amount which was subject matter of cheque simpliciter. Similarly, Jhang Biradari Housing Residents Society supra as aforesaid was not a suit for recovery of money but a suit for declaration of title to immovable property and the period of limitation provided where for commences from the date when the right to sue first accrues. However the limitation for a suit for recovery of price of goods as the subject suits, does not commence from the date when the right to sue accrues but commences from the date of sale and delivery of goods and the extension of limitation by issuance of cheques which were dishonoured claimed by the appellant / plaintiff commences from the date when the acknowledgment was so signed and which can only be the date of the cheque and not the date of dishonour of cheque. To hold otherwise, would be doing violation to the language of Section 18. Moreover, the cheques subject matter of RFAs No. 209/2016, 210/2016 and 212/2016 were returned with the endorsement of Account Closed.”

18. The Defendants also placed reliance on the Division Bench judgment of this Court in **A.K. Khurana v. Steelman Industries AIR 2000 Del 336** which differentiates between ante-dated and post-dated cheques and held that in the case of ante dated cheques, the limitation would begin from the date of the cheque and in the case of a post dated cheque, limitation would not begin until it can be presented for encashment. The other judgments relied upon by the Defendants have mostly been discussed in the above two judgments.

19. On the other hand, the Respondent relied upon the judgment of the Division Bench of this court in ***Rohini Strips v. Steel Authority of India Limited*** (dated 28th September, 2007 in FAO(OS) 380/2007) (hereinafter, '*Rohini Strips*'). The Court was dealing with a suit under Order XXXVII of the CPC wherein leave to defend had been refused. The learned Single Judge of this Court in ***Steel Authority (supra)*** had taken into consideration Article 35 of the Limitation Act and held as under:

"...I am of the considered view that the limitation would commence to run from the date when the cheques in question were returned unpaid to the plaintiff. Since in this case the cheques in question were admittedly returned unpaid to the plaintiff on the ground 'not arranged for' on 1.6.2000, the present suit filed on 23.05.2003 is to be taken as filed within limitation. Hence, the objection regarding limitation taken by the defendants has no merit...."

20. The Division Bench in ***Rohini Strips (supra)***, observing that there was no illegality in the Single Judge's order, notes that the cause of action did not arise till the cheques were dishonoured. The Court held:

"4. We find no illegality in the aforesaid order. The cheques were given by the appellants to the respondent only on 16.3.2000. The aforesaid cheques were to be encashed after presentation in terms of Section 64 of the Negotiable Instruments Act, 1881. The cause of action in the suit was dishonour of the cheque and not merely issuance of the cheque. On the issue of cheque, the suit could not have been filed. Only on dishonour of the cheques that the right to sue accrued. The said cheques were returned back to the respondent unpaid on the ground "not arranged for" on 1.6.2000 and, therefore, the period of limitation would start running from the said date. The suit was filed on 23.52003. The

suit was within the limitation would start running from the said date. The suit was filed on 23.5.2003. The suit was within the period of limitation consequently the aforesaid findings recorded by the learned Single Judge in respect of the plea of limitation cannot be said to be erroneous in any manner.”

21. There are other decisions of the Supreme Court and other courts in respect of bounced cheques, however, the same have been rendered in the context of the NI Act. The said judgments of the Supreme Court and other courts are not being discussed herein as the scheme of the NI Act is a special procedure which is unique to the said Act. In the case of Order XXXVII of the CPC, a suit which is based on monetary instruments for recovery of amounts that are due and payable, the Court would have to see as to when the cause of action for filing of the suit arose. In a case like the present one, where there were a series of transactions between the parties and some amount remained outstanding, the giving of the cheque, which was given as a security, would not by itself construe the cause of action. It is only when the payment is not made and the person in whose favour, the cheque has been issued, seeks to encash the cheque and it is thereafter dishonoured, that the right to sue itself arises. Until and unless the cheque is dishonoured, the Plaintiff cannot maintain a suit under Order XXXVII of the CPC in case of a cheque. There could be a situation where a cheque which has been issued as security for a future payment would be presented only when amounts become due and payable in future. The law of limitation has been designed not to reject claims of parties but to only ensure that old claims are not re-agitated and there is a finality after a particular period.

22. In ***Rohini Strips (supra)***, the Court was dealing with an Order

XXXVII suit where cheques were issued for price of goods. It is in the said context that the Division Bench of this Court clearly upheld the finding that the cause of action commences to run from the date when the cheques were returned unpaid. However, on the other hand in *Empire Home Appliances (supra)*, the learned Single Judge has distinguished the judgment of *Rohini Strips (supra)*. The facts in *Empire Home Appliances (supra)* are distinguishable from the facts of the present case inasmuch as, in the said case, the suits were not simpliciter suits for recovery based on a cheque. The suits there were based on supply of goods, receipt of goods, credit notes issued, and thus, a much more detail factual analysis was required therein.

23. In the present case, however, though the transaction between the parties relates to supply of skimmed milk powder, the suit is a simple suit under Order XXXVII of the CPC based on a cheque. The cheque was valid on the date it was presented. It was returned due to 'insufficient funds'. It is the Defendants' contention that the cheque for Rs.15,00,000/- has been issued as a security, however, there is no document to this effect. The Plaintiff simply submits that the cheque in question was dishonoured and that gave it a cause of action to file the suit for recovery. The cause of action arose only when the cheque was dishonoured and hence the suit is filed within limitation.

(iv) Payment made

24. The application for leave to defend filed by the Defendant seeks the following prayer:

"P R A Y E R

Keeping in view the above said facts and

circumstances, and in the interest of justice, it is therefore, most respectfully prayed that this Hon'ble Court may be pleased to grant unconditional leave to defend to the defendants to contest the above said suit and a primary issue of limitation be framed in the present suit.

Any other order or direction which this Hon'ble Court deem fit and proper may also be passed in favour of the defendant."

25. Though this Court is of the opinion that the cause of action in this case arose from the date when the cheque was dishonoured, however, the nature of the transaction and the specific averments in respect of payments made after the issuance of the cheque deserve to be considered. The cheque was dated 21st November, 2010. In the application for leave to defend, the Defendants have given the cheque numbers and the date the payments were made post the issuance of the cheque. Paragraph 8 of the leave to defend reads as under:

"8. That the present suit is without cause of action because the plaintiff already received the money against the cheque in question and on which the present suit is being filed by the plaintiff. It is pertinent to mention here that the plaintiff and defendants were in business relation and plaintiff used to sale milk powder to the defendant and also used to purchase milk powder from the defendants. In the present case cheque in question was issued on 21.11.2010 as security and after issuing cheque plaintiff have already received the payment in following manner:

<i>Cheque No.</i>	<i>Date</i>	<i>Amount</i>
370190	03.11.2011	5,00,000/-
370306	06.01.2011	3,50,000/-
370308	07.01.2011	3,50,000/-

All drawn on HDFC Bank, New Delhi

Other than this defendants have supplied dry milk to the plaintiff worth Rs. 8,60,000/- which is still to be recovered from the plaintiff.

After receiving the payment the plaintiff deposited the cheque exactly two days before the cheque was expiring i.e., 08.05.2011. Meanwhile, plaintiff received the payment against cheque in question and also during this period the defendant supplied milk powder to the plaintiff.”

26. There seems to be a typographical error in the aforementioned paragraph of the leave to defend filed with the paper book. The Defendant has, with the appeal, filed a bank statement that shows that three payments were made to the Plaintiff dated 3rd January, 2011, 6th January, 2011 and 7th January, 2011. In view thereof, the cheque dated 3rd November, 2011 in the leave to defend is a typographical error.

27. The cheque that was dishonoured was for Rs. 15 lakhs. In the reply to the leave to defend, there is a mere bald denial of the receipt of these payments and the effect thereof is not clear. The Plaintiff does not say that despite the above 3 payments being made, the amount of Rs. 15 lakhs is still due. Thus, the Defendant ought to be given an opportunity to take credit for the payments made, if any, and get the outstanding amount reconciled. This can happen only if leave to defend is granted. This is not a case where the averments are completely vexatious or frivolous. The details of payments made do seem to be credible at this stage, subject to the same being proved in trial. The Defendants, though did not file any documents with the leave to defend application, have placed on record in this appeal, a bank statement to support the payments made as enumerated in para 8 of the application. It

does appear clearly that the Defendants ought to be given an opportunity to place the evidence on record. The application for leave to defend was accompanied by an affidavit. The Court while considering the said appeal has to keep the said application in mind.

28. It would be apt to quote the dictum of the Supreme Court in ***Santosh Kumar v. Bhail Mool Singh 1958 SCR 321*** wherein, the Supreme Court laid down the purpose of Order XXXVII of the CPC in para 8 as under:

“8. It is always undesirable, and indeed impossible, to lay down hard and fast rules in matters that affect discretion. But it is necessary to understand the reason for a special procedure of this kind in order that the discretion may be properly exercised. The object is explained in Kesavan v. South Indian Bank Ltd. I.L.R. 1950 Mad. 251, and is examined in greater detail in Sundaram Chettiar v. Valli Ammal (supra), to which we have just referred. Taken by and large, the object is to see that the defendant does not unnecessarily prolong the litigation and prevent the plaintiff from obtaining an early decree by raising untenable and frivolous defences in a class of cases where speedy decisions are desirable in the interests of trade and commerce. In general, therefore, the test is to see whether the defence raises a real issue and not a sham one, in the sense that, if the facts alleged by the defendant are established, there would be a good, or even a plausible, defence on those facts.

Now, what is the position here? The defendants admitted execution of the cheque but pleaded that it was only given as collateral security for the price of goods which the plaintiff supplied to the defendants. They said that those goods were paid for by cash payments made from time to time and by other cheques and that therefore the cheque in suit had served its end and should now be returned. They set out the exact dates on which, according to them, the payments had

been made and gave the numbers of the cheques.

This at once raised an issue of fact, the truth and good faith of which could only be tested by going into the evidence and, as we have pointed out, the learned trial Judge held that this defence did raise a triable issue. But he held that it was not enough for the defendants to back up their assertions with an affidavit; they should also have produced writings and documents which they said were in their possession and which they asserted would prove that the cheques and payments referred to in their defence were given in payment of the cheque in suit; and he said -

"In the absence of those documents, the defence of the defendants seems to be vague consisting of indefinite assertions....."

This is a surprising conclusion. The facts given in the affidavit are clear and precise, the defence could hardly have been clearer. We find it difficult to see how a defence that, on the face of it, is clear becomes vague simply because the evidence by which it is to be proved is not brought on file at the time the defence is put in.

The learned Judge has failed to see that the stage of proof can only come after the defendant has been allowed to enter an appearance and defend the suit, and that the nature of the defence has to be determined at the time when the affidavit is put in. At that stage all that the Court has to determine is whether "if the facts alleged by the defendant are duly proved" they will afford a good, or even a plausible, answer to the plaintiff's claim. Once the Court is satisfied about that, leave cannot be withheld and no question about imposing conditions can arise; and once leave is granted, the normal procedure of a suit, so far as evidence and proof go, obtains.

The learned High Court Judge is also in error in thinking that even when the defence is a good and valid one, conditions can be imposed. As we have explained, the power to impose conditions is only there to ensure

that there will be a speedy trial. If there is reason to believe that the defendant is trying to prolong the litigation and evade a speedy trial, then conditions can be imposed. But that conclusion cannot be reached simply because the defendant does not adduce his evidence even before he is told that he may defend the action.

We do not wish to throw doubt on those decisions which decide that ordinarily an appeal will not be entertained against an exercise of discretion that has been exercised along sound judicial lines. But if the discretion is exercised arbitrarily, or is based on a misunderstanding of the principles that govern its exercise, then interference is called for if there has been a resultant failure of justice. As we have said, the only ground given for concluding that the defence is not bona fide is that the defendant did not prove his assertions before he was allowed to put in his defence; and there is an obvious failure of justice if judgment is entered against a man who, if he is allowed to prove his case, cannot but succeed. Accordingly, interference is called for here.”

29. Though the above judgement of the Supreme Court was prior to the amendments in 1976 to Order XXXVII of the CPC, the issue that is addressed by the Supreme Court is the standard of proof required for the defendant to be eligible for leave to defend. On this issue, the amendments have no bearing. The Supreme Court has categorically held that an affidavit with the particulars of payments is sufficient to grant leave to defend at this stage, subject to establishing the factum of the said payments having been made, at trial. All issues are, thus, left open.

30. Defendants are accordingly, entitled to conditional leave to defend, subject to depositing a sum of Rs. 3,00,000/- (Three Lakhs) in the Trial

court within 10 days, which is the difference in the amount of the cheque of Rs.15,00,000/- and the amounts claimed to have been paid by the Defendants. If the said deposit of Rs. 3 lakhs is not made within the period stipulated, the leave to defend shall be deemed to be rejected and the suit shall stand decreed for the entire amount of Rs. 15 lakhs along with *pendente lite* and future interest @6% per annum, till realisation.

31. List before the Trial Court on 19.02.2018

JANUARY 31, 2018

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PRATHIBA M. SINGH, J.
Judge

राष्ट्रमेव जयते