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

SUMMONS FOR JUDGMENT NO. 89 OF 2018
IN
COMM SUMMARY SUIT NO. 472 OF 2016

Ashok Commercial Enterprises & Anr ...Plaintiffs
Versus
Kamla Shakti Developers & Ors ...Defendants

Mr JP Sen, Senior Advocate*, with Mr Sandeep Parikh, Mr Abhishek Sawant & Tinaz Kapadia, i/b Pradhan & Rao, for the Plaintiffs.*
Mr Prathamesh Kamat, *with Ms Hiral Vora, i/b Maniar Srivastava Associates, for Defendants Nos. 1, 3 and 4.*
Mr Prayag Joshi*, with Mr Sahil Ansari, i/b Bipin J Joshi, for Defendant No.2.*

CORAM: G.S. PATEL, J
DATED: 16th January 2019

PC:-

1. Heard. The suit seeks recovery of a principal amount of Rs.9.50 crores on the basis of 12 cheques all dated 27th August 2015. All cheques were admittedly dishonoured for insufficiency of funds on presentment. Photocopies of the cheques are annexed. The details of the cheques are set out in paragraph 13 of the Plaint. These cheques were drawn on the 1st Defendant, a partnership firm, and signed on behalf of it by the 2nd Defendant. The cheques specifically indicate that the 2nd Defendant signed as a partner of the 1st Defendant. Photocopies of the cheques are from Exhibits "C1" to "C12" of the Plaint and the dishonour memos are from Exhibits "D1" to "D12" to the Plaint.

2. The particulars of claim indicate a claim for interest including with quarterly rests. Mr Sen for the Plaintiffs does not press this and states that interest may be awarded from 3rd August 2013 at such rate as this Court deems fit or as is permitted in law on a dishonoured negotiable instrument.

3. There is also then the prayer made across the bar for an order of costs under Section 35 of the Code of Civil Procedure 1908 ("**CPC**") as amended by the Commercial Courts Act.

4. The defence is mounted on several different footings. The 2nd Defendant is presently incarcerated and has been in jail for a considerable period of time. Defendants Nos. 3 and 4 were also partners of 1st Defendant. Defendants Nos. 1, 3 and 4, represented by Mr Kamat, say that this was a money lending transaction. The argument by Mr Kamat for these Defendants is based on the decision of the learned Single Judge in the *Parekh Aluminex*[1] line of cases and of the Division Bench in appeal.[2] I have considered both in

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1 *Ashok Commercial Enterprises & Anr v Parekh Aluminex Ltd*, III (2014) BC 361 (Bom).

2 *Parekh Aluminex Ltd v Ashok Commercial Enterprises & Anr*, 2015 (2) ALL Mr. 679 : 2014 SCC OnLine Bom 2304, SJ Vazifdar J (as he then was) and Mrs RP Mohite Dere J, per Mrs RP Mohite Dere.

my judgment in *Mahesh P Raheja v Base Industries Group & Anr.*[3] The submission today is not well-founded and is not supported by either decision in *Parekh Aluminex*. The present suit is based entirely on the dishonour of the cheques and this is *inter alia* evident from paragraph 24 of the plaint. The very first line of that paragraph makes it clear that the suit is based on and only on the dishonoured cheques. The fact that the Plaintiffs' draftsman thought it necessary to include all manner of other narratives is wholly irrelevant. In Summary Suits this is true: less is always more. Mr Kamat says that the Plaintiffs have been found to be unlicensed money-lenders. To the contrary: this allegation has only been made against the Plaintiffs in more than one case, and in each case a finding has been returned against the defendant and in favour of the Plaintiffs, viz., that they are *not* money-lenders.

5. Then there is what I can only describe as an exceedingly odd submission under the Limited Liability Partnership Act 2008 that repayment by the cheques that came to be dishonoured and indeed the antecedent loan transactions were without a sufficient supporting resolution of the 1st Defendant. I do not see how the 1st Defendant can say this about its own internal affairs to begin with, and, more importantly, the need for a supporting resolution is a matter of the internal management of the 1st Defendant LLP. The same principles as would apply to the ostensible authority of a director of a company will apply to partners of an LLP, when a person who is admittedly a partner holds himself out as such and

3 MANU/MH/2462/2018; Chamber Summons No. 488 of 2018 in Commercial Execution Application No. 63 of 2017 in Suit No. 119 of 2016, decided on 22nd July 2018.

transacts on behalf of the firm of which he is a partner. It is not for a creditor to go around trying to sort out the messy internal affairs of an LLP, and this affords the LLP and its partners no defence at all. It amounts to saying this: "because we the partners were remiss in complying with our legal obligations under the LLP Act, therefore you, the creditor, can recover nothing from us." I do not see how this can ever be accepted when put in this fashion and this is precisely what the submission amounts to.

6. There is then an attempt to say that no amount was ever received by the LLP and there was no actual inflow of funds. Once the suit is found to be based on dishonoured cheques and it is further found that those cheques were dishonoured on presentment for insufficiency of funds, then this argument holds no water. It is not as if these cheques were dishonoured or returned unpaid because the drawer stopped payment and gave a reason for that stoppage. There is no question of going t any underlying transaction because that is not the cause of action for this Summary Suit.

7. This is similarly the fate of the last submission that the loan advanced was to the 2nd Defendant personally and was never a loan given to the 1st Defendant, LLP. The cheques were issued by the LLP and therefore there can be no question of the liability of the 1st Defendant.

8. In his Affidavit in Reply, 2nd Defendant, after some completely unnecessary narrative about his incarceration, says in paragraph 9 that he was not in active involvement of the daily business affairs of the 1st Defendant. What is curious however is that in response to paragraph 13 of the Plaint which sets out the details of the cheques, he only denies that he issued the 12 cheques. He does not deny his signatures on the cheques and he does not deny the fact that the cheques show the rubber stamps of the 1st Defendant and describe him as a partner. Photocopies of these 12 cheques are annexed to the Plaint, as I have noted, from Exhibit "C1" to "C12' and the reference to these is to be found at several places in the Plaint but the photocopies are referenced in paragraph 16 of the Plaint. The answer to this in paragraph 18 of the Affidavit in Reply of the 2nd Defendant is no reply at all. He generally denies various allegations and then he makes a denial that an initial amount of ***Rs.50 lakhs*** was paid only to build confidence. This is not a denial of the issuance of the cheques.

9. The 2nd Defendant also says that the cheques were not issued in 2015 but are from a cheque book maintained in the ordinary course of business in the year 2013 (paragraph 4 of the Affidavit in Reply). The difficulty with this submission and the next submission, apparently raised in the context of limitation, is that on its own it accepts that the cheques were *in fact issued*. The argument purports to raise a dispute only about the date of the cheques. There is no proof in support of this defence at all. If this defence was to have any merit it was for the 2nd Defendant to show that there were cheques issued in 2013 and 2014 before and after the present 12-cheque series and therefore suit cheques 'could not have been issued' in 2015. The 2nd Defendant does not say anything of the kind. But even this would not afford a complete answer because it is entirely possible for somebody in 2013 to issue a cheque post-dated to 2015. The cause of action for recovery arises not on the date or alleged date of issuance but on the date of dishonour. This branch of the law is far too well settled for this defence to have any substance.

10. The defence is thus entirely worthless. It is complete moonshine. It is not even remotely plausible let alone probable.

11. The Summons for Judgment is made absolute. The suit itself will have to be decreed. There is no question of giving these Defendants time to make payment or a conditional order. Mr Sen tenders Affidavit in lieu of examination-in-chief and a compilation of certified copies of the Plaintiffs' documents. It is taken on record and marked collectively in evidence as **Exhibit "P1"**. The originals are lodged with the Magistrate's Court in proceedings under Section 138 of Negotiable Instruments Act 1881.

12. There will be a decree against the 1st Defendant in the amount of Rs.9.50 crores with interest at 18% per annum from 9th October 2015, being the date of dishonour. The other Defendants Nos. 2, 3 and 4 will be liable to pay the decretal amount in accordance with the provisions of the LLP Act.

13. As to the question of costs this being a Commercial Suit, these are required to be awarded because under the Commercial Courts Act 2015 if costs are not to be awarded then this must be for good and stated reason. I can find no reasons not to award costs. The full Court Fees of Rs.3 lakhs has been paid. In addition there will be an order of costs but without interest in the amount of Rs.10 lakhs making in all an award of costs without interest of Rs.13 lakhs.

14. The Summons for Judgment and the suit are disposed of in these terms.

15. Decree to be drawn expeditiously.

16. Leave to proceed in execution without awaiting sealing of the decree.

(G. S. PATEL, J)

Note: This order is modified by an order dated 18th January 2019 passed on a praecipe for speaking to the minutes. Corrections are shown in bold and italics.