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

***Date of decision: 16th July, 2019***

\+ **CS(OS) 76/2018 & I.As. 2496/2018, 2029/2019, 2266/2019**

ASHA CHAWLA ..... Plaintiff

Through: Ms. Garima Prashad, Mr. Sumit Chander & Mr. Gurdeep Chauhan, Advocates (M-9810024126)

versus

M/S AMRAPALI AADYA TRADING & INVESTMENT PVT. LTD. AND ANR ..... Defendants

Through: Mr. Hitesh Kumar & Mr. Sahil Sood, Advocates for R-1&2 (M-9999091265)

**CORAM:**
**JUSTICE PRATHIBA M. SINGH**

**<u>Prathiba M. Singh, J.</u> (Oral)**

1. The present suit has been filed by the Plaintiff, who is a resident of Dublin, through her Power of Attorney holder. The Plaintiff is an Overseas Citizen of India (OCI) and she seeks recovery of a sum of Rs.3,95,14,172/- from M/s Amrapali Aadya Trading & Investment Pvt. Ltd. and its Director – Mr. Sanjeev Kumar Sinha, who are arrayed as Defendants No.1 and 2.

2. The case of the Plaintiff is that in the year 2013, the Defendants approached her through one of their agents with an offer to provide stock broking services. It was represented to the Plaintiff that Defendant No.1 was one of the top stock broking companies in India, which would advise her on investments on a regular basis. In view of the representation made by the

Defendants, the Plaintiff invested a sum of Rs. 4 crores with the Defendants and she was assured that she would be able to withdraw her investments whenever she required. The Plaintiff accordingly started availing of the Defendants' services from December, 2013. However, in 2017, the Plaintiff decided to encash her investment and to exit. She accordingly issued sale orders between 25th July, 2017 and 4th August, 2017 to sell all the shares that were in her name and for encashment of the same. Various contract notes were executed, the details of which are as under:

| *SL No.* | *CONTRACT NOTE DATE* | *CONTRACT NOTE NO.* | *SETTLEMENT DATE (NSE)* | *SETTLEMENT NO. (NSE)* | *AMOUNT (IN RUPEES)* |
|---|---|---|---|---|---|
| *1.* | *25.07.2017* | *54293* | *27.07.2017* | *2017140* | *4,747,836* |
| *2.* | *27.07.2017* | *55733* | *31.07.2017* | *2017142* | *3,975,000* |
| *3.* | *28.07.2017* | *56437* | *01.08.2017* | *2017143* | *3,731,181* |
| *4.* | *31.07.2017* | *57105* | *02.08.2017* | *2017144* | *4,917,974* |
| *5.* | *01.08.2017* | *57787* | *03.08.2017* | *2017145* | *4,511,209* |
| *6.* | *02.08.2017* | *58395* | *04.08.2017* | *2017146* | *5,877,869* |
| *7.* | *03.08.2017* | *59051* | *07.08.2017* | *2017147* | *5,812,881* |
| *8.* | *04.08.2017* | *59684* | *08.08.2017* | *2017148* | *5,940,222* |
| | | | | *TOTAL* | *3,95,14,172* |

3. The total sum liable to be paid back to the Plaintiff was Rs. 3,95,14,172/-. She repeatedly wrote e-mails through her agent – Mr. Y.S.V.V. Rajan. The e-mails were dated 31st July, 2017, 1st August, 2017, 2nd August, 2017 and 4th August, 2017. The amounts were to be directly deposited into her PIS account with AXIS Bank. Since no money was being reflected in her account, an e-mail dated 5th August, 2017 was written to check the status of the remittance of the amounts. Since the amounts had not been paid, the agent repeatedly followed up with the Defendants. Vide letter

dated 7th August, 2017, the Defendants admitted to the outstanding sums as under:

> "*In regard to the fund payout on account of sale of stocks from portfolio of NRI Client Mrs Asha Chawla (Code:- DH898) there has been a delay due to audit by NSE. I agree to the mistake and assure you of payment. Hence we will start payout on a contract to contract basis starting tomorrow and will be settled within 8 working days. Till the time for security and trust I am issuing you 8 cheques amounting to the respective 8 contract sheets nett payout amounting to Rs. 39514172 (in words Rupees Three Crore Ninety Five Lakhs Fourteen Thousand and One Hundred Seventy Two Only). The additional amount pending to you in regards to the Dividend payouts lying with us also will settled. The details of the contract are mentioned below:-*

| *Sl. No.* | *Date* | *Contract Note* | *Amount* |
|---|---|---|---|
| *1.* | *25/07/2017* | *54293* | *Rs4747836* |
| *2.* | *27/07/2017* | *55733* | *Rs3975000* |
| *3.* | *28/07/2017* | *56437* | *Rs3731181* |
| *4.* | *31/07/2017* | *57105* | *Rs4917974* |
| *5.* | *01/08/2017* | *57787* | *Rs4511209* |
| *6.* | *02/08/2017* | *58395* | *Rs5877869* |
| *7.* | *03/08/2017* | *59051* | *Rs5812881* |
| *8.* | *04/08/2017* | *59684* | *Rs5940222"* |

4. Thus, as per the above e-mail, the Defendants agreed to start the payments and settle the entire amount within 8 working days, which was not done. Copies of the cheques issued by the Defendants to honour the payments have been placed on record from pages 81 onwards of the Plaintiff's documents. There are a total of 8 cheques bearing the following dates and amounts:

| *SL NO.* | *CHEQUE NO.* | *AMOUNT (Rs.)* | *CORRESPONDING CONTRACT NOTE NO.* |
|---|---|---|---|
| *1.* | *522082* | *4,747,836* | *54293* |
| *2.* | *522083* | *3,975,000* | *55733* |
| *3.* | *522085* | *3,731,181* | *56437* |
| *4.* | *522086* | *4,917,974* | *57105* |
| *5.* | *522087* | *4,511,209* | *57787* |
| *6.* | *522088* | *5,877,869* | *58395* |
| *7.* | *522090* | *5,940,222* | *59684* |
| *8.* | *522089* | *5,812,889* | *59051* |

The same have been signed by Defendant No.2 on behalf of Defendant No.1. The said cheques were presented by the Plaintiff but were returned on the ground that the funds were insufficient. A notice of demand was issued by the Plaintiff on 23rd September, 2017. Since the amounts were not paid at all, the Plaintiff has filed the present suit seeking recovery. The prayer in the suit is as under:

> *"a. pass a decree in favour of the Plaintiff and against the Defendant for a sum of Rs 3,95,14,172/- (Rupees Three Crore Ninety Five Lakh Fourteen Thousand One Hundred and Seventy Two Only).*
> *b. issue summons of suit in Form No.4 in appendix 'B' of Civil Procedure Code or in such other form as may be prescribed.*
> *c. award interest pendent-lite and further interest @ 18% p.a on the aforesaid decretal amount from the date of this suit till its realization.*
> *d. award cost of this suit.*
> *e. pass any other and further order/order as this Hon'ble Court may be deem fit & proper in the facts and circumstances of the case."*

5. The suit was filed under Order XXXVII CPC. Summons were issued in the suit on 21st February, 2018. The Defendants entered appearance on 23rd August, 2018 and it was informed that Defendant No.2 had been taken into custody and was in jail. Insofar as Defendant No.1 was concerned, the appearance was filed. An application seeking leave to defend was also filed on behalf of the Defendants. In the leave to defend application, the Defendants submit that the Power of Attorney holder is not privy to any of the transactions, and hence the suit has not been properly filed. Another averment, which has been made in paragraph 6 of the application, is as under:

> *"6. That it is pertinent to mention that on 07/08/2018, Mr.Y.S.V.V. Rajan had written a complaint to RBI w.r.t. Financial fraud against the Defendants. It is very important to highlight that in the said complaint, the email of 08/08/2017 is referred. It is submitted that in the complaint dated 07.08.2018, the email of next day i.e 8/08/2017 is attached which is impossible and clearly shows that the Plaintiff was never in want of the money and always interested in filing the case."*

The stand of the Defendants is that the Plaintiff was not interested in receiving any payments, but only in harming the reputation of the Defendants as various complaints were written by the agent – Mr. Rajan to SEBI, RBI, etc. The most important fact is that the Defendants state in para 12 that they were never intending to delay any payment of the Plaintiff if existed. The said para reads as under:

> *"12.* <u>*That the Defendant never intended to delay any payment of the Plaintiff if existed.*</u> *It is very evident from the documents and the pleading of the suit that the Plaintiff and Mr. Y.S.V.V. Rajan in collusion concocted the facts of the case and they themselves in collusion tried their best to create such circumstances which lead to the present situation."*

6. The triable issues, which according to the Defendants arise are in respect of the Power of Attorney holder and whether the agent of the Plaintiff abused his position in the Defendant company.

7. The Defendants do not take any stand or deny the letter dated 7$^{th}$ August, 2017 which has been reproduced herein above. The cheques are also not denied except in respect of one cheque, the stand of the Defendants is that the same was returned, as the amounts in figures and in words were not matching. It is an admitted fact that the Plaintiff has also filed complaints under Section 138 of the Negotiable Instruments Act, 1881.

8. The issues between the agent of the Plaintiff i.e. Mr. Rajan and the Defendants are alien to the present suit. The only questions in the present suit are whether the Plaintiff had invested the amounts and whether the Defendants were liable to pay back the amounts as admitted in the letter dated 7$^{th}$ August, 2017. On a specific query put to the Ld. counsel for the Defendants, if the Defendants deny the letter dated 7$^{th}$ August, 2017, it is submitted that there has is no denial of the said letter. However, it is mentioned that the records of the Defendant No. 1 company are with SEBI. It is submitted that the leave to defend application is silent with respect to letter dated 7$^{th}$ August, 2017.

9. It is submitted that Defendant No.2 was in jail in Vishakhapatnam, and therefore the leave to defend application is silent with respect to the letter dated 7th August, 2017.

10. Defendant No.1 is a company. The company is a stock broking agency. The Plaintiff was a client of Defendant No.1. These facts are not denied. The investment of Rs.4 crores is also not denied and the issuance of letter dated 7th August, 2017 has not been denied in the leave to defend application, for whatever reasons. The issuance of the cheques also has not been denied by the Defendants. Under these circumstances, the leave to defend application in fact does not raise any triable defence or credible justification. In fact, the leave to defend application admits the case of the Plaintiff when it states that the Defendants never intended to delay any payment to the Plaintiff. In view of the stand in the leave to defend application and the complete silence on all the relevant facts, no triable defence has been set up by the Defendants. Following the judgment in ***IDBI Trusteeship Services Ltd. v Hubtown Ltd. (2017) 1 SCC 568*** if no defence is set up, the suit is liable to be decreed. A decree for a sum of Rs. 3,95,14,172/- is passed in favour of the Plaintiff against the Defendants along with simple interest @ 12% per annum from today.

11. The suit is disposed of. Decree sheet be drawn accordingly. All pending I.As also stand disposed of.

12. The Plaintiff is also awarded costs of the amount of Court fee which has been deposited.

**PRATHIBA M. SINGH**
**JUDGE**

**JULY 16, 2019/***Rahul*