

\$~OS-14

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

+ CS(OS) 294/2018

ISHI KHOSLA

..... Plaintiff

Through Mr.Rajesh Pathak, Adv.

versus

SHARNARTHI FINANCE LTD.

..... Defendant

Through Mr.Harsh Sethi, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **17.01.2019**

1. This suit is filed under Order 37 for recovery of Rs.2,13,04,382/-.
2. The learned Joint Registrar on 02.11.2018 noted that as per the office report, summons for appearance were sent to the defendant by ordinary process and speed post and were duly served. The plea of the plaintiff was that the defendant has not entered appearance within 10 days of service. On that date after the proceedings were over, learned counsel for the defendant entered appearance and stated that he would file his *vakalatnama* and an application for condonation of delay in filing appearance.
3. On 12.12.2018 before this court, learned counsel for the defendant again sought some time to file an application for condonation of delay in entering appearance. No adverse order was passed in the interest of justice inasmuch as under Order 37 CPC, the defendant was obliged to enter appearance within 10 days from the receipt of the summons and on failure to

do so, a decree was liable to be passed. However, this court had taken a lenient view and had granted some time to the defendant to file an appropriate application seeking condonation of delay in entering appearance. Despite two opportunities as noted above, the defendant has not done the needful.

4. As noted above, the present suit is filed for recovery of Rs.2,13,04,382/-. The case of the plaintiff is that on 24.02.2015, the plaintiff had extended a loan of Rs. 2 crore to the defendant on the terms and conditions as contained in the letter dated 23.02.2015. While acknowledging receipt of the said sum of Rs. 2 cores, the defendant issued five post dated cheques drawn on Axis Bank. On the request of the defendant, several extensions for repayment were also given by the plaintiff to the defendant. When the plaintiff represented for encashment the cheque dated 24.08.2017 for Rs.1 crore on Yes Bank, Basant Lok, Vasant Vihar, New Delhi it was returned with the remark 'funds insufficient'. Other cheque dated 24.09.2017 for Rs.1 core was also dishonoured with the remark 'insufficient funds'. Hence, the present suit.

5. At this stage, learned counsel for the defendant has entered appearance stating that an application seeking condonation of delay was filed day before yesterday. He, however, submits that the defendant is willing to settle the matter. He has today brought in court two demand drafts for a total sum of Rs.36,30,117/- i.e. (i) Demand draft No. 656553 of Rs.33,33,333/- dated 14.01.2019 drawn on Yes Bank and (ii) Demand draft No. 656552 of Rs.2,96,784/- dated 14.01.2019 drawn on Yes Bank. He submits that the balance amount as claimed in the plaint including future simple interest at the agreed rate of interest @ 9% p.a. would be paid within

four months from today. He, however, submits that on receipt of the full payment, the plaintiff should also withdraw the proceedings which are pending under Section 138 of the NI Act.

6. In view of the above, a decree is passed in favour of the plaintiff and against the defendant for a sum of Rs.2,13,04,382/-. The plaintiff shall be entitled to simple interest @ 9% per annum from the date of the filing of the suit till the date of the decree. The plaintiff shall also be also entitled to simple interest @9% p.a. from the date of the decree till the date of the recovery.

7. Keeping in view the above, the time is granted to the defendant to make the balance payment within four months from today. The plaintiff will not execute the decree before expiry of four months from today. As noted a sum of Rs.36,30,117/- has been received by the plaintiff today in partial satisfaction of the decree.

8. The suit stands disposed of.

9. At this stage, learned counsel for the plaintiff states that he would need to take instructions from his client as to whether they would like to withdraw the proceedings under Section 138 of the NI Act on receiving the full decretal amount

10. List on 18.01.2019 for instructions.

JAYANT NATH, J

JANUARY 17, 2019

rb