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

%   **Date of decision: 29th August, 2019**

\+   **<u>CS(OS) 530/2016 & IA No.10963/2018 (u/O XXXVII R-3(5) CPC)</u>**

KLJ PLASTICIZERS LIMITED ..... **Plaintiff**

Through: Mr. Rishi Manchanda & Mr. Arun Kumar, Advs.

Versus

GOOD-HEALTH AGROTECH PVT. LTD. & ORS. .... **Defendants**

Through: Mr. Kunal Godhwani, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit, under Order XXXVII of the Code of Civil Procedure, 1908 (CPC), for recovery of principal amount of Rs.4 crores together with pre-suit interest of Rs.2.16 crores i.e. total Rs.6.16 crores, jointly and severally from defendant no.1 Good-Health Agrotech Pvt. Ltd. and its directors defendant no.2 Kailash Agarwal and defendant no.3 Subhash Chandra Agarwal.

2. It is *inter alia* the case of the plaintiff, that the plaintiff had disbursed a loan of Rs.4 crores to the defendants, vide Real Time Gross Settlement (RTGS) on 22nd April, 2013 in the account of the defendant no.1, and the defendant no.1, in repayment of the said loan, had issued a post dated cheque dated 20th August, 2013 in favour of the plaintiff, but which cheque was returned dishonoured. Hence, this suit.

3. The suit, under Order XXXVII of the CPC on the basis of a dishonoured cheque of the defendant no.1, having been instituted also against defendants no.2 and 3, insofar as contained the relief, also against defendants no.2 and 3, was beyond the purview of Order XXXVII of the CPC and ought not to have been entertained under Order XXXVII. However the Joint Registrar, on 18th October, 2016 without adverting to the said aspect, entertained the suit and issued summons for appearance.

4. On the defendants entering appearance, summons for judgments were issued and served and the defendants have filed IA No.10963/2018 for leave to defend.

5. The counsels have been heard.

6. The counsel for the defendants has urged only two arguments for grant of leave to defend. Firstly, it is contended that the suit, on the basis of cheque dated 20th August, 2013 dishonoured on 23rd August, 2013 could have been filed on or before 23rd August, 2016 but as per the website of this Court, was filed on 7th October, 2016, and is thus barred by time.

7. The counsel for the defendants / applicants, as has become the norm, has taken the plea of limitation, without inspecting the file. The plaint, bears a stamp of filing on 11th August, 2016 and of re-filing on 14th September, 2016 and 7th October, 2016. The suit filed on 11th August, 2016, according to the counsel for the defendants also, is within time. No merit is thus found in the plea for grant of leave to defend, of the suit claim being barred by time.

8. The only other argument urged is, that the defendant no.1 has its registered office at Hyderabad and the defendants no.2 and 3 also are residents of Hyderabad and this Court does not have territorial jurisdiction to entertain the suit. Attention is also drawn to page 17 of Part-IIIA file, being the pro-note dated 22nd April, 2013 at Hyderabad, executed by the defendant no.2 as under:

> "On Demand we promise to pay KLJ Plasticizers Ltd., New Delhi, or order for value received, the sum of Rupees Four Crores only with interest thereon from this date at the rate of 18 per cent per annum."

9. I have enquired from the counsel for the defendants, whether not this Court would have territorial jurisdiction, also on the principle of debtor must seek the creditor.

10. The counsel for the defendants has no response. He has however referred to ***Rashtriya Mahila Kosh Vs. Youth Charitable Organisation*** MANU/DE/2984/2005, but the same has no application to the present case because therein the loan agreement was signed at Andhra Pradesh and no cause of action was found to have accrued within the territorial jurisdiction of this Court.

11. In the present case, it is not the plea of the defendant that the plaintiff has any office at Hyderabad and/or that the agreement was for repayment of the loan at Hyderabad. The cheque issued in repayment of the loan is found to have been issued, though on a bank at Hyderabad but from a multi-city account. The cheque was admittedly presented for payment, in the account of the plaintiff at Delhi.

12. No merit worth grant of leave to defend, the principles whereof are governed by ***IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd.*** (2017) 1 SCC 568, is thus found.

13. No other argument has been urged.

14. I have however enquired from the counsel for the plaintiff, that if the plaintiff desires the decree against defendants no.2 and 3 also, then the suit cannot be treated as a summary suit and would be treated as an ordinary suit.

15. The counsel for the plaintiff sought passover to obtain instructions and on passover states that the plaintiff gives up the claim against defendants no.2 and 3 and seeks recovery only from defendant no.1.

16. That brings me to the question of interest. The promissory note referred to by the counsel for the defendants himself, provides for repayment of loan of Rs.4 crores with interest thereon at the rate of 18% per annum.

17. The transaction between the parties being a commercial one, there is no ground for interfering with the agreed rate of interest.

18. IA No.10963/2018 of the defendants is thus dismissed.

19. A decree is passed, in favour of the plaintiff and against the defendant no.1 Good-Health Agrotech Pvt. Ltd., of recovery of Rs.6.16 crores with interest *pendente lite* and future on the principal amount at the rate of 18% per annum. The plaintiff shall also be

entitled to costs of the suit, with professional fee assessed at Rs.60,000/-.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

AUGUST 29, 2019
'gsr'