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

IN ITS COMMERCIAL DIVISION

SUMMONS FOR JUDGMENT NO. 47 OF 2019
IN
COMMERCIAL SUMMARY SUIT NO. 676 OF 2019

Rajoo V. Shah HUF,]
Through its Karta,]
Rajoo V. Shah]
43, Vushindevi Road No.14,]
Behind Don Bosco School,]
Lotlikar Marg, Matunga,]
Mumbai].. Plaintiff

Versus

Hiten H. Gala]
701, 7th floor, Raj Baug,]
Plot No. 271, Devdhar Road,]
Matunga Cr, Mumbai-400016.]
And]
Unit No. 20, Shilpin Centre,]
Ground floor, 40 G.D., Ambedkar Road,]
Wadala, Near Wadala Telephone Exchange,]
Mumbai – 400 032.].. Defendant

Mr.Akshay Udeshi a/w. Mr. Vedant Chhajed i/b Sanjay Udeshi & Co. for plaintiff.

Mr. Neel Gala a/w. Adv. Dishang Shah for defendant.

CORAM : N.J. JAMADAR, J.

DATE : 14TH FEBRUARY 2020

ORAL JUDGMENT :

1. This commercial division summary suit is instituted for recovery of a sum of Rs.1,50,00,000/- along with further interest @ 18 % per annum from 28-04-2014 till payment and/or realization, on the basis of negotiable instruments and written contract.

2. The material averments in the plaint can be summarized as under :

[A] Mr. Rajoo V. Shah is the Karta of Rajoo V. Shah HUF, the plaintiff. The defendant had requested the plaintiff to advance a sum of Rs.1,50,00,000/-. Thereupon, the plaintiff had advanced a sum of Rs.1,50,00,000/- to the defendant on 28-04-2014 by RTGS. The defendant had drawn a demand promissory note on 28-04-2015 and undertook to pay the debt on demand. The defendant had acknowledged the debt by issuing balance confirmation letters on 1-04-2015, 1-04-2016, 1-04-2017 and 1-04-2018. The defendant towards discharge of the said liability, issued a cheque bearing No.2649 payable on 22-11-2018 drawn on Standard Chartered Bank, Dadar Branch, Mumbai for the sum of Rs.1,50,00,000/-. However, the cheque was returned unencashed on presentment on account of insufficiency of funds. The plaintiff addressed a statutory demand notice under section 138 of the Negotiable Instruments Act, 1881.

[B] The defendant failed to comply with the demand therein. Hence the plaintiff was constrained to lodge a complaint for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 against the defendant. As the amount remained outstanding, this suit for recovery of the said amount along with interest @ 18% per annum from the date of advance.

[C] The writ of summons was served on the defendant in June 2019. The defendant entered appearance. Thereupon, the plaintiff has taken out this summons for judgment.

[D] The defendant has filed an affidavit in reply to the summons for judgment and sought an unconditional leave to defend the suit. The tenability of the suit under Order 37 of the Code of Civil Procedure, 1908 is called in question. A two-pronged defence is sought to be raised on behalf of the defendant. One, the suit is barred by law of limitation and, two, the suit is also barred by the provisions of section 13 of the Maharashtra Money Lending (Regulation) Act, 2014 as the plaintiff does not possess a valid licence to lend money.

[E] An affidavit in rejoinder is filed on behalf of the plaintiff.

3. I have heard Mr.Akash Udeshi, the learned counsel for the plaintiff and Mr.Piyush M. Shah, the learned counsel for the defendant, at some length.

4. Initially, a grievance was made on behalf of the defendant that inspection of the original documents on the strength of which the suit is instituted was not provided to the defendant. It was submitted on behalf of the plaintiff that the original documents were tendered on the record of the Court of the learned Metropolitan Magistrate, before whom, a complaint for the offence punishable under section 138 of the Negotiable Instruments Act is subjudice. By an order dated 9-12-2019, the parties were directed to inspect the documents filed in the Court of the learned Metropolitan Magistrate. The defendant, thereafter, made no grievance that the inspection of the documents has not been provided in pursuance of the order dated 9-12-2019.

5. From the perusal of the material on record, it becomes evident that a sum of Rs.1,50,00,000/- came to be transferred to the account of the defendant by RTGS on 28-04-2014. The copy of the statement of account of the plaintiff evidences the said transfer of a sum of Rs.1,50,00,000/- to the account of the defendant. The demand promissory note drawn on 28-04-2014 evidences the fact the loan was advanced against a negotiable instrument.

6. The fact that the defendant had drawn a cheque in the sum of Rs.1,50,00,000/- dated 22-11-2018 and it was dishonoured on presentment finds support in the copies of the cheque (Exh.'C') and the cheque return memo (Exh.C-1) whereby the drawee bank intimated that the cheque was returned on account of insufficiency of funds.

7. In view of the aforesaid material, the nature of the defence sought to be put-forth on behalf of the defendant to seek an unconditional leave to defend the suit is required to be appreciated. The legal position as regards the leave to defend in summary suit instituted under Order XXXVII of the Code is fairly crystallized. If the defendant discloses, *prima facie*, fair and reasonable defence, ordinarily, the defendant is entitled to an unconditional leave. In contrast to this, if the defence raised by the defendant appears frivolous, false, or sham the leave to defend shall be refused, and the plaintiff is entitled to judgment. The difficulty really arises in those matters where there is a doubt as to whether the defendant has raised a triable issue, and the nature of the conditions to be imposed, if the Court comes to the conclusion of grant conditional leave to defend.

8. In the backdrop of the aforesaid legal position, reverting to the facts of the case, at the outset, it is necessary to note that the affidavit in reply contains denial of anything and everything pertaining to the transaction and even the facts like, the place of residence of the defendant, which could not have been denied. The first defence of the claim being barred by limitation is apparently rested on the fact that the loan was advanced on 28-04-2014 and the suit came to be instituted on 26th April 2019. The learned counsel for the plaintiff urged that the defendant had acknowledged the debt by executing the confirmation letters on 1-04-2015, 1-04-2016, 1-04-2017 and 1-04-2018 (Exh.”E” colly.). This acknowledgment of debt provides a fresh period of limitation under the provisions of section 18 of the Limitation Act, 1963. A summary suit is in order on the basis of the settled accounts. Thus, the defence of the suit being barred by the law of limitation is manifestly untenable.

9. In order to lend support to this submission, the learned counsel for the plaintiff placed a strong reliance on a Full Bench judgment of this Court in the case of ***Jyotsna K. Valia Vs. Parekh & Co.*** [1] . The

1 2007(4) Mh.L.J. 517

Full Bench had dealt with the tenability of the suit on the documents of varied nature, namely :

> i) On a settled account duly confirmed by the defendants;
>
> ii) On a settled account which is not confirmed by the defendants;
>
> iii) On an acknowledgment of liability ;
>
> iv) On honoured cheque; and
>
> v) On a mere writing or a receipt;

As regards the suit based on settled accounts duly confirmed by the defendant, the Full Bench concluded as under :

> *"29. In so far as the 'settled account is concerned,' it is no doubt true as noticed by the learned single Judge, that the various judgments adverted to, for holding that the summary suit would lie on a settled account, either of the Privy Council or of the Supreme Court did not arise from suits filed as summary suits. However, after the judgment of the Privy Council (Elvira L. Rodrigues) Sequeira (supra) which has been considered by the Supreme Court in Hiralal & Ors. (supra), a summary suit on a settled account, duly confirmed by the Defendant is maintainable as it is an acknowledgment by the Defendant in the ledger in which mutual accounts have been entered and the accounts settled between them. Such settling of accounts gives rise to a written contract on a fresh cause of action, with an implied promise to pay the amount settled. A summary suit would therefore lie on 'Settled accounts duly confirmed by the defendants. Issue (1) is answered accordingly."*

10. In the case at hand, there are successive confirmation letters executed by the defendant from the year 2015 to 2018. The claim is thus within the period of limitation if the period of limitation is computed from the last of the balance confirmation letters.

11. Even otherwise, the provisions contained in section 25(3) of the Indian Contract Act, 1872 come to aid of the plaintiff if the balance confirmation letters are eschewed from consideration. The cheque, in view of the provisions contained in the Negotiable Instruments Act, 1881, constitutes a promise given by its drawer to pay the amount covered by the cheque to the payee. A promise to pay a debt which is barred by limitation is legally enforceable. A profitable reference in this context can be made to a Division Bench judgment of this Court in the case of ***Dinesh B. Chokshi Vs. Rahul Vasudeo Bhatt & Anr.*** [2] .

12. The suit is thus, within the period of limitation on both the counts i.e. on account of acknowledgment of the liability within the meaning of section 18 of the Limitation Act and for being a promise to pay a time barred debt under section 25(3) of the Indian Contract Act.

2 2013(2) Mh.L.J. 130

13. The challenge to the tenability of the suit on the count of it being within the mischief of the provisions contained in Maharashtra Money Lending (Regulation) Act, 2014 stands on a much weaker foundation. The affidavit in reply contains bald assertions that the plaintiff deals in the business of money lending. It is not the case of the plaintiff that the loan in question was advanced on interest. Nor the demand promissory note dated 28-04-2014, against which the loan was advanced, mentions any stipulation for payment of interest. Thus, the primary condition of the transaction being foul with the provisions of section 13 of the Maharashtra Money Lending (Regulation) Act, 2014 is not satisfied.

14. The learned counsel for the plaintiff urged that there is no material on record to indicate that the plaintiff deals in the business of money lending. Advancing loan, even on interest, on one or two occasions, according to the learned counsel for the plaintiff, does not fall within the tentacles of the provisions of the Maharashtra Money Lending (Regulation) Act, 2014. In support of the said submission, the learned counsel for the plaintiff placed a strong reliance on a judgment of the learned Single Judge of this Court in the case of ***Base***

Industries Group & Anr. Vs. Mahesh P. Raheja & Ors. [3].

15. In the said case, the learned Single Judge had traced the pronouncements on the transactions which fall within the mischief of money lending and culled out the legal propositions in the following words :

> *"36. From this discussion, the following propositions emerge:*
>
> *(a) Not every loan is axiomatically a money-lending transaction for the purposes of the 1946 or the 2014 Acts. There is no such presumption in law.*
>
> *(b) It is doing of the 'business of money-lending' that attracts the provisions of the statute. In interpreting the phrase, the correct emphasis is on the word 'business', not 'money-lending'. It is the word 'business', and not the expression 'money-lending', that is determinative. Simply put, every instance of lending money is not money-lending. Not every lender is a Shylock.*
>
> *(c) To constitute 'business', a single isolated instance does not, and even several isolated stray instances do not, constitute 'the business of money-lending'. To be Mahesh P Raheja & Ors v Base Industries Group & Ors engaged in the 'business of money-lending', the activity must be systematic, regular, repetitive, and continuous, and must*

3 CHS/488/2018 S-119-2016 dt.13/22/7/2018

> *generate an appreciable revenue. The fact that the borrower is a stranger to the lender does not on its own make the latter a 'money-lender'.*
>
> *(d) A loan recovery action is not barred merely because there is a loan. It has to be shown that the loan was part of 'the business of money-lending'.*
>
> *(e) A plaintiff seeking a recovery of a loan is not required to show that his suit is not barred by the Money Lenders Act. It is always for the defendant who puts up money-lending as a defence to show that the transaction is forbidden by the Money Lenders Act."*

16. As indicated above, in the case at hand, there not a shred of material to indicate that the plaintiff deals in the business of money lending. In fact, as the plaintiff does not claim to have advanced the loan on interest and the promissory note, against which the said loan was advanced, vouches for the said fact the provisions of Money Lending Act are simply not attracted.

17. The conspectus of the aforesaid consideration is that both the defences put forth by the defendant are unworthy of credence. The defences are illusory and moonshine. Thus, the defendant is not entitled to leave to defend the suit.

18. This propels me to the question of interest to be awarded. The defendant had drawn the cheque towards the repayment of the loan amount on 22-11-2018. Evidently, there was no agreement to pay interest at a specified rate. The provisions of section 80 of the Negotiable Instruments Act, 1881 are thus attracted to the situation at hand. The amount covered by the cheque was payable on 22-11-2018. The plaintiff is therefore entitled to recover interest @ 18% per annum from 22-11-2018 on the said amount of Rs.1,50,00,000/-.

19. The upshot of the aforesaid consideration is that the summons for judgment deserves to be made absolute.

20. Hence, the following order :-

(i) The summons for judgment is made absolute.

(ii) The defendant do pay a sum of Rs.1,50,00,000/- to the plaintiff along with interest @ 18% per annum from 22-11-2018 till realization.

(iii) The defendant do pay costs of Rs.2,50,000/-, to the plaintiff, quantified under Section 35 of the Code of Civil Procedure, 1908, as amended by the

Commercial Courts Act, 2015.

(iv) The plaintiff is entitled to refund of Court fees in accordance with the rules.

(v) The decree be drawn up and sealed expeditiously.

(vi) The Commercial Suit stands disposed of in above terms.

[N.J. JAMADAR, J.]