

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

% Decided on: 27th February, 2020

+ **CS(COMM) 422/2017**

SH. RAJEEV SETHI Plaintiff

Represented by: Mr.Lalit Bhardwaj and Mr.Jatin
Anand Dwivedi, Advocates.

versus

SH. SIDHARTH GUPTA Defendant

Represented by: Mr.Pranav Kishre Jha, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

I.A. 7116/2018 (delay of 165 days in refiling leave to defendant-by defendant)

1. By this application, defendant seeks condonation of delay of 165 days in refiling the leave to defend application.
2. Though in the application the defendant has interchangeably used the words 'delay in filing' and 'delay in refiling' however, a perusal of the record reveals that summons in the suit under Order XXXVII were issued to the defendant on 31st May, 2017 returnable on 25th July, 2017 on which date learned counsel for the defendant entered appearance and filed his memo of appearance and vakalatnama. Thereafter the plaintiff filed the application being I.A. No.11865/2017 under Order XXXVII Rule 3(4) CPC seeking issuance of summons for judgment against the defendant which was issued on 13th October, 2017. In the report dated 17th November, 2017 it was noted that summons for judgment issued to the defendant were still awaited.
3. Learned counsel for the defendant entered appearance on 17th

November, 2017 and stated that he had not received the summons for judgment however, as the learned counsel for the defendant had entered appearance and there was deemed service, the application seeking leave to defendant was to be filed within the statutory period thereafter.

4. A perusal of the record reveals that the defendant filed the leave to defend application on 24th November, 2017, that is, within 10 days of the receipt of summons for judgment however, in view of the objections therein the application was first refiled on 29th January, 2018 and thereafter on 16th May, 2018. To support the reasons for delay in refiling the application, defendant has filed an additional affidavit along with the medical documents which show that the defendant was suffering from scarred haemorrhages in the eyes and the treatment thereof had started on 14th June, 2017 itself. There are continuous medical records in this regard and the defendant was finally admitted to surgery on 12th May, 2018 and discharged on the same day.

5. Learned counsel for the plaintiff refuting the contentions raised in the additional affidavit states that the defendant had been appearing in the other proceedings under Section 138 of the Negotiable Instruments Act and appeared before the learned Trial Court on 13th November, 2017, 2nd February, 2018 and 5th May, 2018.

6. From the documents so filed and the fact that the defendant appeared before the Court on three dates, it is evident that though the defendant was not bedridden but certainly he was not in a proper medical condition and considering the same this Court deems it fit to condone the delay of 165 days in refiling the application, subject to cost of ₹5,000/- to be paid to the learned counsel for the plaintiff within two days.

7. Application is disposed of.

I.A. 7115/2018 (under Order XXXIX Rule 3 (5) CPC)

1. Plaintiff has filed the present suit for recovery of a sum of ₹2.25 crores from the defendant.

2. Case of the plaintiff is that the defendant was well known to the plaintiff and had friendly relations. In March, 2010 the plaintiff left the partnership firm business which he was earlier carrying on as the firm was dissolved. Though the plaintiff continued to do the garments business as sole proprietor, the defendant induced the plaintiff to start electronic goods' business such as DVDs and Dish Receiver Components with him as the defendant was doing the business of import and export under the name and style of M/s Shubhda Overseas and was importing items from China. Defendant took a total sum of ₹2,96,54,000/- from the plaintiff in cash as per the details mentioned in the ledger and account books duly maintained by the plaintiff relating to the dealing with the defendant on the pretext of importing and trading the goods during the intervening period of March, 2010 to March, 2012. The said amount was arranged by the plaintiff from his own different sources for his better prospects. The control of the business such as placing of order, importing and finishing the goods, preparation of import documents etc. was managed and controlled by the defendant and the defendant never disclosed his earnings nor showed his accounts. The defendant also took a sum of ₹25 lakhs in cash in the month of May, 2013 on interest for his personal need which was also arranged by the plaintiff from his uncle. On the persistent demand of the plaintiff accounts were finally settled in the month of June, 2013 wherein the defendant from the year 2011 to 2013 acknowledged the liability of a sum of

₹2,96,54,182/- and agreed that the same was to be paid in the following manner:

- (a) *That the defendant had to deliver goods worth Rs.1,99,00,000/- (Rs.One Crore & Ninety Nine Lakhs Only) to the plaintiff within few days;*
- (b) *That the remaining rounded off amount of Rs.98,00,000/- had to be paid to the plaintiff by the defendant through private committees/chits to be organised/subscribed in the Market;*
- (c) *That an amount of Rs.25,00,000/- (Rs.Twenty Five Lakh Only) had to be paid along with interest @1.25% P.M.*

3. Subsequent to the acknowledgement dated 22nd June, 2013 the defendant also executed an acknowledgement, undertaking and MOU regarding the return of the aforesaid outstanding amount. Thereafter on 12th June, 2014 the defendant issued six post dated cheques for a sum of ₹25 lakhs amounting to ₹1.50 crores. On 13th June, 2014 the defendant also handed over to the plaintiff three duly executed promissory notes for a sum of ₹25 lakhs each. After the settlement of accounts and execution of the documents, the defendant only delivered goods worth ₹97 lakhs to the plaintiff under receipts from August, 2013 to January, 2014 but the defendant failed to deliver the remaining goods worth ₹1.02 crores to the plaintiff despite the demands. The defendant in violation of his assurances based on the duly executed documents to return the payment of ₹98 lakhs failed to return the amount of ₹98 lakhs nor made him member of any private committee/chit fund nor was any monthly interest paid on the amount of ₹25 lakhs. Thus the defendant was liable to pay a sum of ₹98 lakhs, ₹25 lakhs with interest besides a sum of ₹1.02 lakhs being the value

of the remaining undelivered goods. The defendant further sought time till June, 2016 to clear the mentioned amount and gave assurance that as and when he got his property free from Capital First, the defendant would sell the same and clear outstanding of plaintiff. Plaintiff accepted the request of defendant on a condition that defendant would issue post dated cheques amounting to ₹2,25,00,000/- to be cleared between April to June, 2016. When the plaintiff continued seeking his money the defendant on 12th June, 2014 handed over six post dated cheques of ₹25 lakhs each being cheque Nos.290447, 290448, 290449, 290450, 290451 and 363435 for a sum of ₹25 lakhs each totalling to ₹1.50 crores. The amount in the said cheques were duly filled up. On three of the cheques the defendant wrote the name of the plaintiff but on the three other cheques he kept the name in the same blank. The defendant however failed to give the post-dated cheques for the balance amount of ₹75 lakhs rather handed over three promissory notes dated 13th June, 2014 each amounting to ₹25 lakhs. In December 2015, plaintiff learnt that defendant had settled his loan account with Capital First and defendant got his house freed, however, defendant did not attempt to clear outstanding with plaintiff. When the plaintiff deposited the six cheques bearing numbers as noted above, the six cheques were returned unpaid with remarks 'account closed' on 24th June, 2016. Thereafter the plaintiff issued a legal notice dated 21st July, 2016 to the defendant, which was duly served however, no reply was given. Thus besides the complaint under Section 138 of the Negotiable Instruments Act, the plaintiff filed the present suit for recovery of the sum of ₹2.25 crores out of which a sum of ₹1.50 crores is based on the six cheques which got dishonoured and the amount of ₹75 lakhs which was due is based on the three promissory notes.

4. Along with the plaint the plaintiff has filed the promissory notes, certified copies of the dishonoured cheques, settlement arrived at between the parties on 20th June, 2013 besides the two acknowledgments on the e-stamp dated 22nd June, 2013 wherein the defendant admitted its liability to pay a sum of ₹2,96,54,182/- and in the second acknowledgement disclosed the mode of payment to be made. Copy of the memorandum of understanding dated 22nd June, 2013 has also been filed by the plaintiff.

5. In the leave to defend application the defendant nowhere disputes his signatures on the pro-notes, cheques, acknowledgments of the liability, memorandum of understanding. The pleas taken by the defendant are that the cheques, promissory notes and the other documents annexed along with the plaint filed by the plaintiff were got executed at the chamber of the lawyer at Tis Hazari Courts who happened to be the father-in-law of the plaintiff, the suit was barred by limitation and that the payment acknowledged did not match with the ledger accounts and false ledger accounts were filed before this Court. It is claimed that the promissory notes filed with the plaint were sham documents and they were payable on demand and no demand had been made in this regard.

6. As noted above the plaintiff has based the present suit not merely on the ledger accounts but on the acknowledgements of the defendant which were on stamp papers besides the memorandum of understanding, the six cheques which were dishonoured and three promissory notes. In the entire leave to defend there is no plea whatsoever that the acknowledgments and the memorandum of understanding or the cheques were not signed by the defendant. The pleas thus taken in the leave to defend application are thus sham.

7. Further considering the fact that the defendant executed and handed over the cheques on 12th June, 2014 and promissory notes to the plaintiff on 13th June, 2014, the present suit also cannot be held to be beyond the period of limitation.

8. Consequently, the leave to defend application is dismissed.

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1. Consequently the suit is decreed in favour of the plaintiff and against the defendant for a sum of ₹2.25 crores along with interest @ 9% p.a. pendente lite and future, besides actual cost of ₹2.22 lakhs which was deposited as court fees by the plaintiff.

(MUKTA GUPTA)
JUDGE

FEBRUARY 27, 2020

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