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

%	**Reserved on: 2nd June, 2021**

Pronounced on: 4th June, 2021

\+	**CM (M) 344/2021**

KRISHAN CHAND SHARMA	.....Petitioner
Through:	Mr. Rohit Goel, Advocate

Versus

ALTAFUR RAHAMAN	.....Respondent
Through:	Mr. Yogesh Kumar, Advocate

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

[VIA VIDEO CONFERENCING]

CM (M) 344/2021, CM APPLN. 15168/2021 (by the petitioner u/S 151 CPC for interim directions/stay)

1. This petition has been filed under Article 227 of the Constitution of India by the defendant before the learned Trial Court. He is aggrieved by the order of the learned Trial Court granting conditional 'leave to defend' the suit filed by the respondent under Order XXXVII of the Code of Civil Procedure, 1908 ("CPC", for short) and placing a condition of a deposit of Rs.10,00,000/- in the form of an FDR as security before the learned Trial Court.

2. The petitioner/defendant and respondent/plaintiff have business

dealings as the petitioner/defendant used to purchase raw materials/chemicals used in the manufacturing of toys in his factory from the respondent/plaintiff. The suit was filed under Order XXXVII when two cheques issued by the petitioner for Rs.6,34,000/- and Rs.1,35,000/- were dishonoured. According to the respondent/plaintiff, these cheques were issued towards an outstanding sum of Rs.10,09,502/- payable by the petitioner/defendant towards raw materials purchased by him on credit. The suit is for the said sum of Rs.10,09,502/-.

3. In the impugned order, the learned Trial Court has noted that the petitioner/defendant had questioned the authenticity of the two cheques and had also stated that he had not received any goods in terms of the invoices as detailed in para No.6 of the impugned order and that the invoices 2 to 5 were forged and did not bear his signatures. It also noted that that though there was no interpolation seen in the amounts mentioned in words, the alterations in figures were alleged to be writ large. On a consideration of these submissions on behalf of the petitioner/defendant, it found it appropriate to hold that the defence raised by the petitioner/defendant could at best be described as plausible**,** therefore, the petitioner/defendant was found entitled to conditional leave to defend the suit.

4. In the present petition, it is submitted by the learned counsel for the petitioner/defendant, Mr. Rohit Goel that when the suit had been filed on the basis of invoices and a running account, the suit could not have been filed as one under Order XXXVII. He has pointed out that in several decisions of this court, particularly in ***Ajay Shaw v. HDFC Limited and***

Ors. 2018 SCC OnLine Del 9913, this court had held that when a suit was being filed on the basis of a running account and invoices and not a liquidated sum of money, the recourse to Order XXXVII was improper. It is the contention of the learned counsel that following these judgments, the learned Trial Court ought to have treated the suit as a regular suit and in any case granted unconditional leave to defend.

5. The learned counsel for the respondent Sh. Yogesh Kumar on the other hand submits that the suit was filed also on the basis of the dishonoured cheques and was not fully based on the invoices and therefore the suit was maintainable under Order XXXVII. It was also submitted that the suit in so far as it relates to the cheques be treated as one under Order XXXVII and as a regular suit for the remainder of the claim. This submission appears farfetched. In any case, the fact is that the learned Trial Court has granted leave to defend the suit to the petitioner/defendant, which has not been challenged by the respondent/plaintiff. The question before this court is limited to the correctness of the orders of the learned Trial Court imposing a condition while granting this leave to defend.

6. This Court has considered the submissions of both counsel, the record and the cited judgments. In ***Ajay Shaw (supra)***, the learned Single Judge of this Court referred to its earlier decision in ***IFCI Factors Ltd. Vs. Maven Industries Ltd. & Ors.*** 2015 SCC OnLine Del 13519 in detail and reiterated that suits based on invoices could not be filed under Order XXXVII CPC and such suits have to be filed as ordinary suits. It may be useful to reproduce para 16 of the judgment of the learned Single Judge

in ***IFCI Factors Ltd. Vs. Maven Industries Ltd. & Ors.*** 2015 SCC OnLine Del 13519 as under:

> ***"16.*** *It is trite, and as observed in the aforesaid three orders/judgment, that Order XXXVII CPC is a unique departure from the ordinary principles of natural justice wherein a defendant has an automatic right to defend the suit. By Order XXXVII CPC, exceptions have been carved out whereby defendant cannot defend the suit as a matter of right as is done in other cases and this is because ex facie or at least prima facie the specific liability of a defendant in terms of a liquidated amount is shown to clearly exist from a written contract containing the liquidated amount or from a dishonoured bill of exchange or a cheque.* ***Once there are such documents, being a written contract containing liquidated amount or a dishonoured bill of exchange or a cheque, which by themselves without any further fact(s) or document(s) required to be pleaded and proved, shows clearly the liability of the defendant in favour of the plaintiff as existing, it is for this reason that filing of such suits under Order XXXVII CPC are allowed*** *and defendant who is otherwise ex facie or prima facie liable by virtue of the written document is asked to seek leave to defend to contest the suit. Obviously an exception from the normal procedure and the requirement of following the principles of natural justice when it exists, the same has to be necessarily construed within the strict terms of the requirements contained in Order XXXVII CPC. Order XXXVII CPC is not intended to allow parties to extend the scope of Order XXXVII CPC so as to allow filing of the suits when amounts which are claimed in the suit do not directly spring and arise from the written document or the dishonourd bill of*

exchange or cheque. ***Putting it in other words, the cause of action in the suit for recovery of money which is filed under Order XXXVII CPC concludes as regards the averments on the existence of the cause of action to the written document containing the liquidated amount or the dishonoured bill of exchange or cheque****. If in the suit plaint, besides the averments of the cause of action of the written contract containing the specific liquidated amount which is specifically claimed in the suit, necessary further facts, averments and cause of action has to be pleaded for the plaintiff to show the claim to the amount claimed in the suit, then, such a suit is not based only on the written document only or the dishonoured bill of exchange or cheque only because other facts are to be established to show the liability of the defendant claimed in the suit, and thus such a suit was not intended by the legislature to be filed under Order XXXVII CPC.* ***Accordingly, therefore once the suit amount which is claimed in the suit is not the amount which directly arises in terms of the liquidated amount stated in the written document or a dishonoured bill of exchange or a cheque, the suit will not be maintainable under Order XXXVII CPC otherwise a large category of cases which were not meant by the legislature to be filed under Order XXXVII CPC will be sought to be filed and entertained under Order XXXVII CPC.****"*

(emphasis added)

7. In the present case, the respondent/plaintiff in para 6 of the plaint has stated as follows:

"6. That the defendant used to make part/ adhoc payments to the plaintiff time to time, hence in this way the

defendant was having a running account with the plaintiff."

8. In paras 5 and 7 of the plaint, the respondent/plaintiff has again listed out the details of the GST complied invoices which he claims were issued to the petitioner/defendant of what was due and what was paid i.e., Rs.12,34,502/- and Rs.2,25,000/- respectively, thus leaving, according to the respondent/plaintiff, a sum of Rs.10,09,502/- as outstanding for which he has filed the suit. The dishonoured cheques are alleged to have been issued for Rs.6,34,000/- and Rs.1,35,000/-.

9. Thus the suit has not been filed for definite/liquidated amount as stated in the cheques but rather on averments in addition thereto. The sum of Rs.10,09,502/- is claimed on the basis of invoices on which the respondent/plaintiff claims to have paid GST. The dues claimed to be outstanding are on the basis of the running account maintained by it, at the bottom of the account, giving due credit to amounts paid by the petitioner/defendant towards the dues claimed by the respondent/plaintiff. The cheques are also alleged to have been issued towards satisfaction of these outstanding dues amounting to a total of Rs.7,69,000/ which is clearly less than the suit amount of Rs.10,09,502/-.

10. In the light of these facts and as no other judgment differing with the view taken and referred to hereinabove has been brought to the notice of this Court by learned counsel for the respondent, following the judgments of this court, clearly the suit had to be treated as an ordinary suit and not one under Order XXXVII. In other words, the learned Trial Court erred in granting conditional leave to defend.

11. The petition is accordingly allowed and the impugned order in so far as it has granted conditional leave to defend requiring the petitioner to deposit by way of an FDR worth Rs.10,00,000/- towards security is set aside. The learned Trial Court is directed to take the written statement without condition, on record and proceed with the trial.

12. The petition and application stand disposed of.

13. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

JUNE 04, 2021
ak/ck