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

Date of decision: 8th December, 2021

\+ **RSA 84/2021 & CM APPLs. 42505-06/2021**

HARICHAND ..... Appellant
Through: Mr. Bhola Singh, Advocate (M-9810972603)

versus

MIS RAMA ARJUN RETAILS PVT LTD. ..... Respondent
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

2. Pursuant to the last order dated 6th December, 2021, where intimation of filing of this appeal was directed to be given to the Plaintiff/Respondent *(hereinafter "Plaintiff"),* notice has been served upon the Plaintiff by mobile/SMS/WhatsApp as also by e-mail. A report to this effect has been put up by the Registry. However, none appears for the Plaintiff.

3. The present second appeal is filed challenging the Appellate Court's order dated 14th May, 2020 in ***RCA No.39/2017*** titled ***Hari Chand v. Rama Arjun Retail Pvt. Ltd.***, by which the Trial Court's order dated 30th January, 2017 in ***Suit No.8861/16*** titled ***Rama Arjuna Retail Pvt. Ltd. v. Sh Hari Chand & Anr.*** has been upheld and the leave to defend for the Appellant/Defendant No. 1 (*hereinafter "Defendant No.1"*) has been rejected.

4. A suit for recovery was filed by the Plaintiff seeking recovery for a sum of Rs.2,10,000/- along with pendente lite and future interest @ 18 % per annum. The case of the Plaintiff was that Defendant No.1 i.e., Mr. Harichand, with the co-defendant (guarantor of Defendant No.1), had purchased two Dell Inspiron 1540 laptops, a Canon photocopier and a lamination machine for a total sum of Rs. 1,97,500/-. The same was to be repaid in monthly instalments of 12 months for Rs.17,500/- per month and only a sum of Rs.27,500/- was paid as advance/margin money. The remaining amounts were not paid. The goods were received by the Defendants and the receipt stated to be duly signed by the Defendants, was placed on record by the Plaintiff before the Trial Court. Defendant No.1 then filed a leave to defend application before the Trial Court under Order XXXVII Rule 3(5) CPC. The Trial Court vide order dated 30th January, 2017, held that the Defendants do not dispute the delivery of the machines and the issuance of the cheque as also the signing of the promissory note. Under these circumstances, the Trial Court decreed the suit in the following terms:

> *"10. Ld. Counsel for the defendants argued that the defendants had already repaid the loan and only certain amount is left to be paid to the plaintiff and that it is for the plaintiff to produce its statement of account to show the pending loan amount. In this regard, it is pertinent to mention that Section 103 of Evidence Act provides that the burden of proof of a fact lies on that person who wishes the court to believe in its evidence and Section 106 of Indian Evidence Act provides that any fact especially within the knowledge of a person is required to be proved by that person. In this case, the defendants*

have alleged that they took a personal loan and that the major portion thereof has been repaid, however, neither the loan amount has been specified nor the amount repaid has been mentioned nor any proof regarding the personal loan as alleged by the defendants has been filed on record. On the other hand, the plaintiff has relied upon the invoice vide which the goods were supplied and the acknowledgment receipt of the goods which is admittedly signed by both the defendants. The defendants have not denied their signatures even on the loan term sheet or the promissory note dated 23.12.2014 which is annexed with the plaint and relied upon by the plaintiff. The defendant no. 1 has not even denied the issuance of cheque bearing no. 262110 dated 05.02.2015 for Rs. 2,10,000/- drawn on Andhra Bank in favour of the plaintiff company nor the dishonor thereof has been disputed.

11. Therefore, I am of the opinion that the defence raised by the defendants is sham and practically a moonshine. Hence, in my considered opinion, the defendants have not been able to raise any point which requires trial in the matter. The application for Leave to Defend is accordingly dismissed. As a consequence of dismissal of the application for Leave to Defend, the suit of the plaintiff is decreed for a sum of Rs. 2,10,000/- (Rupees Two lacs Ten Thousand Only) along with interest @ 24 % per annum, as agreed between the parties vide loan term sheet (annexure E), from the due date of invoice i.e. 23.04.2014 till the date of realization of the amount. The plaintiff is also entitled to costs of the suit."

5. The Appellate Court has also considered the facts and has observed that the Defendants have duly admitted the receipt of the machines and the property as also the fact that there was a proper sale and has accordingly,

rejected the appeal.

6. Before this Court, the primary submission made by ld. counsel for Defendant No.1 is that the Plaintiff-Company is not a registered company and the certificate of incorporation has not been filed. The second submission being made is that the interest @ 24% is on the higher side. Ld. Counsel also submits that the machines which are the subject matter of contention in the suit are not identifiable with specific serial numbers or bill numbers.

7. As regard the first contention, a perusal of the leave to defend application filed by Defendant No.1 in the Trial Court under Order XXXVII Rule 3(5) read with Section 151 CPC, shows that Defendant No.1 himself has admitted that the Plaintiff-company is registered. The extract of the same is as below:

> *".....<u>The plaintiff is company registered under the companies act</u> and he loan has to be recovered if the loan amount is pending or dues as per books of accounts audited by the approved auditor."*

8. Thus, this issue need not be separately proved by filing a certificate of incorporation, after Defendant No.1 has admitted that the Plaintiff is a registered company. Second, insofar as the documents evidencing receipt of goods and payments are concerned, a perusal of the leave to defend application and the supporting affidavit shows that there is no plea whatsoever in respect of promissory note dated 23rd December, 2014 and the post-dated cheque bearing no. 262110 dated 5th February, 2015, issued in favour of the Plaintiff by Defendant No.1. The signing and issuance of the same is admitted in this matter. As for the goods' serial numbers not being identifiable, as held by the Appellate Court, the goods have been identified

by their make and model numbers in the receipts. The entire leave to defend application is extremely general and sketchy in nature and no specific defence has been raised which can be held to be plausible or triable.

9. The law in this respect is quite clear as held by the Supreme Court in ***IDBI Trusteeship Services v. Hubtown Ltd., (2017) 1 SCC 568***. It was categorically held by the Supreme Court in this case that if the defendant has no substantial defence and/or raises no genuine triable issues then the leave to defend the suit shall be refused and the plaintiff is entitled to judgment forthwith. In the opinion of the Court no plausible or triable issue has been raised by Defendant No.1. The observations of the Court are as below:

> *17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36], as follows:*
> *17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.*
> *17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.*
> *17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the*

triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

<u>17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.</u>"

10. Resultantly, leave to defend has rightly not been granted and there is no substantial question of law that arises in this appeal. However, the Court observes that the interest that has been awarded is @ 24% per annum which is extremely high, considering the prevalent interest rates. Under these circumstances, the judgment does not warrant any interference apart from the interest portion which is modified to 7% simple interest per annum and the Trial Court's order is upheld with this modification.

11. The appeal is disposed of, along with all pending applications, in these terms.

12. Let the part decretal amount which is stated to be deposited before the Trial Court be released in favour of the Plaintiff/Decree Holder within four weeks.

PRATHIBA M. SINGH
JUDGE

DECEMBER 8, 2021
Rahul/MS/SK