

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

SUMMONS FOR JUDGMENT NO.60 OF 2021
IN
COMMERCIAL SUMMARY SUIT NO.68 OF 2021

Sanjay Madhusudhan Mehra
Aged 55 years, Indian Inhabitant, of Mumbai,
Occupation Business, having his office at
Gala No.112-113, Gala Udyog Coop. Society
Hariyali Village, L.B.S. Marg, Vikhroli(W),
Mumbai-400 083

.. Applicant
(Org. Plaintiff)

IN THE MATTER BETWEEN-

Sanjay Madhusudhan Mehra,
Aged 55 years, Indian Inhabitant, of Mumbai,
Occupation Business, having his office at
Gala No.112-113, Gala Udyog Coop. Society
Hariyali Village, L.B.S. Marg, Vikhroli(W),
Mumbai-400 083

.. Plaintiff

V/s.

1. M/s. Ahuja Properties and Associates,
A Paratnership Firm duly registered under the
Indian Partnership Act, 1932
having its office at A/201, Rajpipla,
Main Avenue, Opp. Standard Chartered
Bank, Linking Road, Santacruz (W),
Mumbai - 400054

2. Jagdish Bhagwandas Ahuja,
Adult, Indian Inhabitant, Occ: Business
Partner of-
M/s. Ahuja Properties and Associates
having his address at 111, Soona Villa,
Perry Cross Road, Bandra (W),
Mumbai-400 050.

3. Gautam Jagdish Ahuja,
Adult, Indian Inhabitant, Occ: Business
Partners of-

M/s. Ahuja Properties and Associates
having his address at 111, Soona Villa,
Perry Cross Road, Bandra (W),
Mumbai-400 050.

.. Defendants

**INTERIM APPLICATION (L) 18447 OF 2021
WITH
INTERIM APPLICATION NO. 1656 OF 2021**

...
Mr. Girish Kedia a/w. Mr. Krushang Kedia, Mr. Manoj Agre for
the Plaintiff
Mr. Sahil Mahajan, for the Defendants.

...
**CORAM : KAMAL KHATA, J.
RESERVED ON: 20TH JULY, 2023.
PRONOUNCED ON: 1ST SEPTEMBER, 2023.**

P.C. :

1. This commercial summary suit has been filed by the plaintiff for the recovery of an amount of Rs.1,18,25,513/- together with interest at the rate of 12% p.a. on the principal amount of Rs.75,00,000/-.

2. Sometime in the year 2013, the defendants Nos. 2 and 3 approached the plaintiff with a request to grant them short term loan for their business of construction and development activities. Pursuant to the request, plaintiff lent a sum of Rs.75,00,000/- in two tranches Rs.25,00,000/- was advanced on 10 June 2013 and Rs.50,00,000/- was advanced on 22 December 2014 in favor of the

defendant No.1. Against this loan, the defendants executed Bills of Exchange payable on demand in favor of the plaintiff signed by the defendants Nos. 2 and 3. Defendants agreed to pay interest @ 23.40% p.a. thereon and also agreed to repay the said loan within a period of one year from the date of the availment of the loan.

3. The defendants have paid interest at the rate of 23.40%, which is evinced by the deduction of TDS on the interest amount. At the request of the defendants, the period of loan was extended from time to time. Although the defendants issued cheques, they requested not to deposit the same and assured the repayments directly into the plaintiff's account by RTGS or Pay Order. On 1st April 2019, an amount of Rs.75,00,000/- was due and payable by the defendants to the plaintiff for which the defendants issued a cheque bearing Cheque No.517896 dated 31 July 2019 and another cheque bearing Cheque No.517893 towards interest amounting to Rs.29,32,762/-. Both the cheques were drawn on Cosmos Bank, Vile Parle Branch. The plaintiff could not en-cash the cheques as the same were dishonoured on 1st August 2019 and returned with the remark "funds insufficient" by the plaintiff's bank.

4. The defendants thereafter issued cheques for the principal and the interest in the month of November 2019, December 2019 and lastly in or around 31 December 2020 for principal amount of Rs.75,00,000/- and for interest of Rs. 41,00,513/-. These cheques drawn on IDBI bank bearing Nos.751118 and 751119 when deposited were also returned with the remark "funds insufficient". The plaintiff was therefore constrained to issue legal notice through his advocate on 29 January 2021 calling upon the defendant No. 1 and also defendant Nos.2 and 3 being its partners to jointly and severally pay the plaintiff's the outstanding amounts which were then to the tune of Rs.1,16,00,513/-. On failure to comply with the notice, the plaintiff filed a suit on 3 April 2021, in which plaintiff has claimed rupees Rs.1,18,25,513/- as more particularly stated in the particulars of claim at exhibit H of the plaint.

5. Mr. Kedia the learned counsel for the plaintiff urged that by an order dated 24 June 2022 the partners of the defendant No.1, viz. namely 2 and 3 have been adjudicated as insolvents. Upon service of the Summons for Judgment No. 60 of 2021, the defendants have filed their affidavit in reply dated 25 November 2021 and the plaintiff has filed a rejoinder on 27 July 2022.

The learned counsel submitted that there is no defence is made out in the affidavit in reply and thus the suit ought to be decreed.

6. Mr Mahajan the learned counsel for the defendants submitted that the plaintiff has advanced money to the defendant No. 1 as a friendly loan which did not fall under the purview of section 2 (1)(c) of the Commercial Courts Act, 2015. He submitted that since there was suppression of this material fact, unconditional leave ought to be granted to the defendants. He submitted that this is not a commercial dispute as per section 2(1) (c) and as therefore being wrongly lodged as a commercial suit. According to him, there is no financial transaction nor any agreement between the parties where the defendants agreed to pay interest to the plaintiff. It is submitted that the suit is not based on a written contract or on a guarantee and therefore not covered under order XXXVII of the Code of Civil Procedure. The learned counsel submitted that the Bills of Exchange relied upon by the plaintiff was not stamped with the applicable stamp duty and therefore, such document was not admissible in evidence. The defendant also took up the plea that the plaintiff is carrying on business of money lending as defined under section 2(2) of the Bombay Money Lenders Act, 1946 (**"the Act"**) and is not a money

lender as defined under Section 2(10) of the Act. He submitted that the plaintiff does not hold any valid license to carry on business of lending money as provided under Section 5 of the Act and as required under Section 10 of the Act. He therefore urged that the recovery of the claim is barred by the provisions of the Act. He submitted that the plaintiff has claimed an exorbitant sum of Rs. 43,25,513/- towards interest upto 31 May 2021. It is submitted that the Bills of Exchange was not presented for payment in accordance with the Negotiable Instruments Act 1881. Noting and protesting has also not been done and the learned counsel submitted that the defendant No. 1 paid an interest of Rs.31,86,624/- for the period 7 June 2013 to 31 March 2016 towards the loan amount of Rs.75,00,000/-. It was urged that the Bills of exchange were not due and enforceable and that the cheques were issued as security at the request of the plaintiff. It is further urged that the debt is not due and payable inasmuch as the Bills of Exchange have not been presented for payment and the cheques that were given as security were deposited without the consent of the defendant No.1. It is further urged that the interest amount of Rs.43,25,513/- is an exorbitant interest on the principle sum of Rs.75,00,000/- and therefore the claim is denied and disputed. It was further contended that the cheques were

illegally deposited therefore there was no question of honoring any cheque as such. It is submitted that there is no agreement in writing for charging an interest rate of 23.4% per annum and for this reason alone the Summary Suit was not maintainable and the defendants were entitled to unconditionally leave to defend.

7. In rejoinder the plaintiffs have contended that there was no defence as the defendants themselves have deducted TDS on the interest amounts that were due and payable. It is therefore submitted that it did not lie in the mouth of the defendants to submit that there was no agreement between the parties for payment of interest @ of 23.4%. The plaintiff also contended that apart from the TDS the defendants themselves had issued cheques towards principal and interest which evince the agreement between the parties.

8. Learned counsel for the plaintiff relied upon the judgment in the case of ***Mr. Mohandas I. Chatlani v/s. Varad L. Ullal***¹ to submit that once the TDS certificates were issued in favour of the plaintiff, the defendants had admitted the liability. It further held that in that case no payment of interest was paid to the plaintiff. The

1 Summons of Judgment No. 425 Of 2019 dated 10th August 2012

defendant had deducted the tax at source on such payment of interest and had deposited the same with the government.

9. The learned counsel for the defendant relied upon the judgment in the case of *Shree Associates v/s. Gammon India Limited*² to submit that the payment of TDS is not an admission of liability.

10. In my view, the defendant's defence is a total bogey. The defendants Nos. 2 and 3 have been adjudged insolvents. It is apparent that they have borrowed funds from people and they have not repaid them. Besides that, in the present case, the defendants have admittedly issued cheques for the principal as well as interest amounts on at least three occasions. It does not lie in the mouth of the defendants to now say that there was no agreement between the parties to levy interest @ 23.4% p.a. pending payment of principal amount. It is clearly retracting from the promises and assurances for payment of interest. Besides the issuance of the cheques, the defendants have also deducted TDS and deposited the same with the government which fairly evinces that there was an intent to pay interest @ 23.4% p.a. to the

² 2015 SCC OnLine Bom 2223

plaintiff on the principal sum of the Rs.75,00,000/-. There is no dispute with regard to the principal sum of the Rs.75,00,000/- which they have borrowed from the plaintiff. The reliance on the judgment of *Shree Associates (supra)* does not favour the defendants inasmuch as in that case the company had since the inception disputed the claim of the petitioner. The facts of that case were different from the present case.

11. With regard to the submissions of the transaction being both a friendly loan and a money lending transaction, in my view are self-destructive. In the present case, the defence of the Plaintiff having lent a friendly loan is misconceived in as much as the Defendant has executed Bill of Exchange payable on demand as well as cheques to secure the repayment in favour of the Plaintiff. Thus, it cannot be construed as a friendly loan. It is difficult to accept that the Plaintiff gave a sum of ₹ 75,00,000/- as a friendly loan to the Defendant. Mere use of the words “friendly loan” by the Defendant does not change the nature of the commercial transaction which would fall within the definition of ‘commercial dispute’. The defence of illegal money lending was taken up for the first time in the reply. Thus it deserves to be rejected.

12. In my view these defences are standard defences advised to be taken in a summary suit. It is neither a friendly loan nor a money lending transaction by a money lender. It is a simple loan transaction. It would be useful to refer to the judgement of this Court in the case of ***Mahesh P Raheja & Ors. Vs. Base Industries Group & Ors.***³ wherein the learned single judge had traced the pronouncements on the transaction which fall within the mischief of money lending and culled out the legal propositions in paragraph 39. To substantiate a case of money lending, the Defendant has to give details and particulars that the Plaintiff was engaged in the business of money lending by showing that the activity of the Plaintiff was systematic, regular, repetitive and continuous that generated appreciable revenue. The Defendant has failed to give any such details. Thus, the contention is liable to be rejected.

13. In this case, there is no dispute inasmuch as cheques have been issued favouring the plaintiff. The judgment relied upon by the plaintiff however is clearly binding and I concur with the views of this court. The facts are similar to the case of ***Mr. Mohandas I. Chatlani (supra)***. I am therefore of the opinion that there is no

3 2018 SCC OnLine Bom 21322

substance in the defence raised by the defendants and the same is sham, illusory and moonshine. The defendants have clearly failed to pay the principal and interest amounts due to the plaintiff and is therefore not entitled to unconditional leave. The defendants have failed to make out a plausible defence.

14. I therefore pass the following order.

- (I) The suit is decreed in terms of prayer clause (a);
- (II) The deficit of refund shall be treated as the first part of the costs.
- (III) The costs of Rs. 1,00,000/- is granted which would be in addition to the deficit of court fees. The cost will not carry any interest.
- (IV) The plaintiff would be entitled execute the decree without awaiting the sealing of the decree.
- (V) The sealing of the decree be expedited.
- (VI) Summons for Judgment and the Suit is disposed of in aforesaid terms
- (VII) In view of the disposal of the Suit, all interim applications stands disposed of.

(KAMAL KHATA, J.)