IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6758 OF 2025

M/s. Sai Trading Company & Anr. ..Petitioners
Versus
Suraksha Packers ...Respondent

Mr. Anand S Patil, for the Petitioners.

CORAM: N. J. JAMADAR, J.
DATE : 16th MARCH 2026

Oral Order:

1. Heard the learned Counsel for the petitioners.

2. The challenge in this petition is to an order dated 07th February, 2025 passed by the learned Civil Judge, Senior Division, Pune, whereby the learned Civil Judge while granting leave to defend the suit has imposed the condition to deposit a sum of Rs. 3,00,000/- (Rupees Three Lakhs).

3. The Respondent has instituted a suit for the recovery of a sum of Rs. 13,55,519/- (Rupees Thirteen Lakhs Fifty Five Thousand Five Hundred and Nineteen) alongwith interest thereon, on the basis of the dishonored cheques. The respondent/plaintiff claimed that, he had sold and delivered goods to the defendants and, there was a failure on the part of the defendants to pay the price of the goods sold and delivered.

Eventually, the cheques were drawn and those cheques were also dishonored upon presentment. Hence, the summary suit based on dishonored cheques.

4. Mr. Patil, the learned Counsel for the petitioner, submitted that, the petitioner has raised a specific defence that, the goods were not delivered to the petitioner. In such circumstances, when the Trial Court was persuaded to grant leave to defend the suit, the condition to deposit a sum of Rs. 3,00,000/- (Rupees Three Lakhs) could not have been imposed. The Trial Court ought to have granted an unconditional leave to defend the suit.

5. In a summary suit based on a dishonored cheque, slightly different considerations come into play. The presumptions contained in Section 118 and 139 of the Negotiable Instruments Act, 1881 are attracted. An unconditional leave to defend the suit cannot thus be granted, unless the Court *prima facie* comes to the conclusion that, a slightly higher threshold than that of a probable defence is satisfied.

6. A useful reference in this context can be made to a Division Bench judgment of this Court in the case of ***Rajesh Laxmichand Udeshi @ Bhatia Vs. Pravin Hiralal Shah*** [1], wherein the Division Bench has enunciated the law in regard to the

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1 2012 SCC OnLine Bom 2181

grant of leave to defend a suit based on dishonored cheque. The observations in Paragraph Nos. 13, 14 and 15 read as under:-

> *"13. The object of introducing Chapter XVII in the Negotiable Instruments Act was to ensure that persons drawing cheques to do so with responsibility by making the lapse to honour the commitment, a criminal offence. In Goa Plast (P) Ltd. v. Chico Urrsula D'Souza, (20024) 2 SCC 235 and in various other decision, the Supreme Court has noticed that it is now well-known that the object of the provision of Section 138 of the Act is for proper and smooth functioning of business through banking transactions. In particular, that the use of cheques as negotiable instruments would primarily depend upon the integrity and honesty of the parties. It was noticed that cheques were misused as a device interalia for defrauding the creditors and stalling the payments. It was also noticed in a number of decisions of the Supreme Court that dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. The Supreme Court also noticed that the remedy available in a civil court is a long-drawn process and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee.*
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> *14. When a summary suit instituted is based on a cheque which is dishonoured, effect of Sections 138 and 139 of Negotiable Instruments Act raising*

statutory presumption that the cheque was issued in discharge of a liability, is a relevant consideration to be kept in mind. The said Sections cast a burden upon the defendant to rebut the presumption. Summary suits instituted on cheques which are dishonoured will, therefore, stand on a higher footing than summary suits instituted on the basis of other documents. In such cases, the Court will have to take into consideration the statutory presumption which is raised when the cheques are dishonoured. The object behind providing a statutory presumption under the Negotiable Instruments Act has to be kept in mind while judging the credibility of a defence raised by the defendant in summary suit. Thus, the test of more than "shadowy" and less than "probable" as adverted to by the Apex Court cannot apply in cases where the law requires a person to explain certain state of affairs. The judgments which are relied upon by the learned counsel do not consider the effect of the statutory presumptions raised under the Negotiable Instruments Act when a cheque is dishonoured. In our opinion, when a cheque is dishonoured, the Court is enjoined with the duty to scrutinize the defence put up by the defendant with a much higher degree of care and circumspection. Such summary suits cannot be treated as on par with the cases instituted on contracts or invoices etc. where such statutory presumptions do not operate.

15. The legislative intent behind enactment, of Sections 138 and 139 of the Negotiable Instruments Act is to prevent abuse of the banking system. Thus, one who issues a cheque extends a solemn promise to *pay. Based on this promise and action, the recipients arrange their affairs and quite often enter into further transactions. Unless extra ordinary circumstances are made out one who issues cheque is deemed to have undertaken to pay. Negotiable Instruments Act enforces the promise strictly by raising statutory presumption and treating it as an offence: This provision elevates a cheque to a higher status than the other instruments, such as written contract etc. to which no such statutory presumption is attached. What needs to be emphasized is that presumption in respect of a dishonoured cheque places a higher burden on the defendant to elucidate the defence than the burden which is cast on a defendant where the suit is filed on the basis of ordinary instruments. In the cases, based on dishonour of cheques the defendant must satisfy the conscience of the Court and cannot take shelter behind the rule formulated primarily in respect of suits based on ordinary instruments the court while exercising the discretion to grant leave or otherwise to the defendant in such cases cannot be, oblivious of the legislative intent to place the promise made through a cheque on a higher pedestal than the promise made through an ordinary instruments. This is not to state that moment a Summary Suit is lodged based on a dishonoured cheque, it must be decreed without anything more. What needs to be, emphasized is that the fact that there is a statutory presumption attached to the dishonoured cheque will constitute an important ingredient while considering the question whether leave to defend should be granted in cases of*

> *dishonoured cheques and the Court must scrutinize the defence strictly. The object, of the summary procedure is ultimately to see that the defendant does not needlessly, prolong the litigation by creating untenable, frivolous and casual defences so as to deprive the plaintiff of the monies due to him."*

7. In the case at hand, the suit has been instituted for recovery of sum of Rs. 13,55,519/- (Rupees Thirteen Lakhs Fifty Five Thousand Five Hundred and Nineteen). The condition to deposit a sum of Rs. 3,00,000/- (Rupees Three Lakhs) only, in the circumstances of the case, even otherwise, does not appear to be unreasonable or onerous and, thus, impugned order cannot thus be faulted at on that count also.

8. The petition thus stands dismissed.

[N. J. JAMADAR, J.]