
Aslam Shaikh And Others Vs Dinesh Shishupal Punia

Summons For Judgment (L) No. 29311 Of 2022, In Summary Suit No. 20 Of 2022

Court: Bombay High Court

Date of Decision: Feb. 2, 2023

Acts Referred:

Code Of Civil Procedure, 1908 " Order 6 Rule 4#Negotiable Instruments Act, 1881 " Section 138#Maharashtra Money Lending (Regulation) Act, 2014 " Section 2(3), 5, 13, 13(1)#Indian Contract Act, 1872 " Section 10, 14, 15, 16, 16(2)(3)#Code Of Criminal Procedure, 1973 " Section 156(3)

Hon'ble Judges: Arif S. Doctor, J

Bench: Single Bench

Advocate: Sarosh Bharucha, Ameet Mehta, Nirav Marjadi, Srushti Mehta, Nikita Deora, Riya Chauhan, Rushabh Vidyarthi, Hemant Ghadigaonkar, Pallavi Chatterjee

Final Decision: Disposed Of

Judgement

Arif S. Doctor, J

1. The present Summary Suit seeks recovery of an amount of Rs.4,00,00,000/- alongwith interest at the rate of 9% per annum based upon a

Settlement Agreement dated 21st September, 2021 ("the said Agreement").

Facts Briefly Stated

2. It is the Plaintiffs' case that they (husband and wife) had lent and advanced monies to the Defendant and the Defendant's wife (one

Manisha Punia) over a period of time commencing from the year 2016. The Plaintiff sets out that the Plaintiffs and the Defendant and his wife resided

in the same building and were on friendly terms. The Defendant and his wife were in dire need of funds and had thus approached the Plaintiffs for

financial help. It was pursuant to this that the Plaintiffs lent and advanced the following amounts to the Defendant and the Defendant's wife

(Manisha Punia), viz.

i. Plaintiff No.1 lent and advanced an amount of Rs.98,50,000/-through 6 separate cheque/RTGS transactions to the Defendant's wife (Manisha

Punia).

ii. Plaintiff No. 2 lent and advanced an amount of Rs.1,36,50,000/-through 7 separate cheque/RTGS transactions to the Defendant's wife

(Manisha Punia).

iii. Plaintiffs lent and advanced to the Defendant and his wife (Manisha Punia) an amount of Rs.4,50,00,000/- in cash in 8 tranches.

Thus according to the Plaintiffs, the total amount lent and advanced by them to the Defendant and the Defendant's wife (Manisha Punia) as more

particularly set out in the Complaint was Rs.6,85,00,000/- .

3. The Complaint sets out that thereafter various Bills of Exchange were issued by the Defendant initially totaling to an amount of Rs.6,85,00,000/- which

was then subsequently reduced to Rs.6,50,00,000/- after a payment of Rs.35,00,000/- was made by the Defendant's wife (Manisha Punia) which

was adjusted against the total principal amount of Rs.6,85,00,000/-. Thereafter the following three post dated cheques were issued to the Plaintiffs viz.,

i. Cheque No. 001194 dated 1st February, 2021 for Rs.63,50,000/- issued by Defendant and his wife (Manisha Punia) in favour of Plaintiff No.1.

ii. Cheque No. 001195 dated 10th February, 2021 for Rs.1,36,50,000/- issued by Defendant and his wife (Manisha Punia) in favour of Plaintiff No.2.

iii. Cheque No. 103832 dated 10th February, 2021 for Rs.4,50,00,000/- issued by Defendant in favour of Plaintiff No.1.

However, all the three PDCs were returned dishonored as a result of which the Plaintiffs initiated following proceedings under Section 138 of the

Negotiable Instruments Act, 1881 before the Metropolitan Magistrate, 44th Court at Andheri, Mumbai viz.,

a) Case No. SS/959/2021 for dishonour of cheque No.001194 dated 1st February, 2021 for the sum of Rs.63,50,000/- .

b) Case No. SS/1039/2021 for dishonour of cheque No.001195 dated 10th February, 2021 for the sum of Rs.1,36,50,000/-.

c) Case No. SS/1042/2021 for dishonour of cheque No.103832 dated 10th February, 2021 for the sum of Rs.4,50,00,000/-.

4. The Plaintiffs also filed a complaint against the Defendant and the Defendant's wife (Manisha Punia) before the Economic Offences Wing

(EOW), which was registered as Complaint No.P.E.140/2021. It was during the course of the investigation/proceedings before the EOW, that the said

Settlement Agreement was entered into between the Defendant (arrayed as party of the first part therein) and Plaintiff Nos.1 and 2 (arrayed as party

of the second and third part respectively therein). Since the Defendant failed and neglected to honor the said Agreement, the Plaintiffs have filed the

present Summary Suit.

Submissions of Mr. Bharucha on behalf of the Plaintiffs

5. Mr. Bharucha, learned counsel appearing on behalf of the Plaintiffs invited my attention to the Settlement Agreement and pointed out therefrom

that the Defendant had unconditionally and unequivocally undertaken to make the following payments to the Plaintiffs on behalf of his wife and himself

viz.

6. It is hereby agreed by and between the party of the first, second and third part, the party of the First part, on behalf of his Wife, shall make

payment of Rs.1,60,00,000/- (One Crore Sixty Lacs Only) being the full and final settlement amount including the principal and interest upto 30th

November, 2021, before the Hon'ble 44 th MM Court, Andheri on or before the time of withdrawal of the complaint being CC no. 1039/SS/2021

filed by the party of the Third Part. If there is any delay in making this payment by the Party of the First Part in that case he shall pay the interest of

9% Per Annum on the remaining balance amount payable to the Party of the Third Part.

7. It is hereby agreed by and between the party of the first, second, and third part that, the party of the First Part, on behalf of his Wife, shall make

payment of Rs.65,00,000 (Sixty Five Lacs Only) being the full and final settlement amount including the principal and interest upto 30th November,

2021, before the Hon'ble 44th MM Court, Andheri on or before the time of withdrawal of the complaint being CC No.959/SS/2021 filed by the

party of the Second Part. If there is any delay in making this payment by the Party of the First Part in that case, he shall pay the interest of 9% Per

Annum on the remaining balance amount payable to the Party of the Second Part.

8. It is hereby agreed by and between the party of the first, second, and third part that, the party of the first part shall pay a sum of Rs. 1,75,00,000

(One Crore Seventy Five Lacs Only), being the full and final settlement amount including the principal/interest/claim upto 30th November 2021, to the

party of the Second Part, before the MMC, 44th Court, Andheri on or before the time of withdrawal of the complaint being CC No. 1042/SS/2021

filed by the party of the Second part. If there is any delay in making this payment by the Party of the First Part in that case, he shall pay the interest of

9% Per Annum on the remaining balance amount payable to the Party of the Second Part.

He submitted that it was therefore beyond the pale of doubt that the Defendant had undertaken to pay to the Plaintiffs a total sum of Rs.4,00,00,000/-

in the manner more particularly mentioned in the said Agreement. He submitted that despite this, the Defendant had failed and neglected to make

payment of the amount or any part thereof. He therefore submitted that it was thus that the present Suit had been filed as a Summary Suit under the

provisions of Order XXXVII of the Code of Civil Procedure, 1908.

6. Mr. Bharucha submitted that the only two real defences raised by the Defendant to resist the present Summons for Judgment were (a) the defence

of money lending and (b) that the said Agreement was not adequately stamped. He submitted that both these defences were devoid of any merit and

were legally untenable. Insofar as the defence of money lending was concerned, he invited my attention to the said Agreement wherein it was

specifically stated that the amounts were advanced by the Plaintiffs to the Defendant and the Defendant's wife (Manisha Punia) as friendly loans.

He submitted that the question of the Defendant now contending that the said loans were money lending transactions was as untenable as it was

malafide. Without prejudice to this submission, Mr. Bharucha invited my attention to Section 2(3) of the Maharashtra Money Lending (Regulation)

Act, 2014 (the Money Lenders Act) which reads thus:-

“2(3) “business of money-lending means the business of advancing loans whether in cash or kind and whether or not in connection with, or

in addition to any other business;

He pointed out from the said definition that the emphasis was on the word “business”. He submitted that friendly loans or even stray

transactions of lending money would not fall within the definition of the business of money lending as contemplated in Section 2(3) of the Money

Lenders Act. He submitted that the onus to show that the transactions were forbidden by law and/or were transactions of money lending was upon

the party alleging the same i.e. the Defendant. He submitted that only after the Defendant had been able to demonstrate that these transactions were

money lending transactions (unlicensed) would the Defendant be entitled to avail of the bar in Section 13 of the Money Lenders Act as a defence to

any Suit for recovering such monies lent. He submitted that apart from a mere averment, the Defendant had not even attempted to establish that the

advances given by the Plaintiffs to the Defendant and the Defendant’s wife (Manisha Punia) were in the nature of money lending transactions as

contemplated under the provisions of the Money Lenders Act . In support of his contention that the bar under the Money Lenders Act would not apply

in the present case, he invited my attention to a judgment of this Court in the case of Bipin Vazirani Vs. V. Raheja Design Construction Private

Limited & Anr. 2018 SCC OnLine Bom 19972 which held as follows:-

“7. In that decision I considered the settled law on the subject including amendments to the Money Lending Act and the interpretation

of the expressions “loan”, “money lender”, “business of money lending”, and, in particular how such a defence could be

raised. In paragraph 36 of the Base Industries Group decision I culled out propositions that seemed to me to emerge from that discussion:

“36. From this discussion, the following propositions emerge:

(a) Not every loan is axiomatically a money-lending transaction for the purposes of the 1946 or the 2014 Acts. There is no such presumption

in law.

(b) It is doing of the “business of money-lending” that attracts the provisions of the statute. In interpreting the phrase, the correct

emphasis is on the word “business”, not “money-lending”. It is the word “business”, and not the expression “money-

lending”, that is determinative. Simply put, every instance of lending money is not money-lending. Not every lender is a Shylock.

(c) To constitute "business of money-lending", a single isolated instance does not, and even several isolated stray instances do not, constitute "business of money-lending".

business of money-lending. To be engaged in the "business of money-lending", the activity must be systematic, regular, repetitive,

and continuous, and must generate an appreciable revenue. The fact that the borrower is a stranger to the lender does not on its own make

the latter a "money-lender".

(d) A loan recovery action is not barred merely because there is a loan. It has to be shown that the loan was part of "the business of

money-lending".

(e) A plaintiff seeking a recovery of a loan is not required to show that his suit is not barred by the money Lenders Act. It is always for the

defendant who puts up money-lending as a defence to show that the transaction is forbidden by the Money Lenders Act.

He submitted that in light of the observations of this Court in the aforesaid case, it could not even remotely be suggested by the Defendant that the

present Suit was barred under the provisions of the Money Lenders Act.

7. Insofar as the contention that the said Agreement was inadequately stamped, he submitted that this defence was a purely technical defence and

one which was legally untenable. He submitted that even assuming the said Agreement was insufficiently and/or inadequately stamped the same

would not afford a defence, (much less a legal and valid defence) to a Defendant who was otherwise under an obligation to make payment of the

monies under a purportedly insufficiently stamped Agreement. In support of his contention he invited my attention to a judgment of this Court in the

case of Kapil Puri Vs. Rupinder Singh 2019(3) Mh.L.J, which, in the very similar fact scenario, held as follows:-

"12. In regard to the contention that the appellant was coerced to enter into a settlement agreement, also has no basis as there is not a semblance

of material to support this contention. Further the contention as urged on behalf of the appellant that the settlement was not adequately stamped and

which was a valid defence for an unconditional leave, we are in complete agreement with the observations of the learned Single Judge. The Supreme

Court in the case Hindustan Steel Limited vs. Messrs Dilip Construction (Company), (1969) 1 SCC 597, and the decisions of this Court in Neolite

Polymer Industries Pvt. Ltd. vs. Standard Chartered Bank and ors., 2007 MhLJ Online 60 = 2007(6) Bom.C.R. 539 and Wolstenholme International

Ltd. vs. Twin Stars Industrial Corporation and ors., 2002(5) Mh.L.J. 121 = 2001(4) Bom.C.R. 114, would recognise the legal principle that the Stamp

Act is a fiscal measure enacted with an object to secure revenue for the State on certain classes of instruments and it is not enacted to arm a litigant

with a weapon of technicality to meet the case of the opponent. Adverting to the said principles of law, the learned Single Judge directed that the

document be impounded and sent for adjudication and the technical defect alleged by the appellant can be taken care of. We find that the said

approach of the learned Single Judge is completely in consonance with law requiring no interference.

13. We are therefore of the clear opinion that no triable issue was raised by the appellant/defendant. None of the defences as raised by the

appellant/defendant can be said to be real issues so as to hold that there was a good or a plausible defence on the said assertions. In the absence of a

fair dispute and there being no uncertainty in regard to the claim of the respondent/plaintiff, requiring any further inquiry into the claim, necessarily the

summary suit was required to succeed. Further the test which are prescribed in the judgment of the Supreme Court in the case Mrs. Raj Duggal vs.

Ramesh Kumar Bansal (supra) for a summary suit to succeed, stood completely satisfied, for the learned Single Judge to pass to orders not only on

the summons for judgment under the provisions of Order 37 of Civil Procedure Code but also decree the suit. ¶

He therefore submitted that none of the defences raised by the Defendant were substantial and/or raised any genuine triable issue. He submitted the

defences raised were in fact completely frivolous and vexatious. He therefore submitted that the Plaintiff was thus entitled to a judgment forthwith on

the principals stated in the judgment of the Hon'ble Supreme Court in the case of IDBI Trusteeship Services Limited Vs. Hubtown Limited viz.

¶ 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. ¶

Submissions of Mr. Hemant Ghadigaonkar on behalf of the Defendant.

8. Mr. Ghadigaonkar, learned counsel for the Defendant at the outset submitted that the Settlement Agreement had been signed by the Defendant not

out of his own free will and accord but out of force and coercion exerted upon the Defendant. He therefore submitted that the Plaintiffs were not

entitled to any reliefs based upon the said Agreement much less any reliefs in summary proceedings. In support of his contention he invited my

attention to the following paragraph of the Affidavit-in-Reply where the Defendant had specifically pleaded that the Defendant had been coerced and

pressurized to sign the said Agreement viz.,

¶ 10. I say that the Suit is filed under order XXXVII of CPC however, no ingredients of Summary Suit has been satisfied by the Plaintiffs. I

say that alleged written contract/agreement dated 21.09.2021 between the Plaintiffs and present Defendant is not properly stamped and not

registered and same is obtained by the Plaintiffs by coercion and under the threats of arrest by the Economic Offence Wing. The Plaintiffs

by influencing the Police machinery and Officers of the EOW, has pressurized the defendant to sign the alleged agreement for settlement

upon the terms and conditions of the Plaintiffs. At the outset and without prejudice the draft of the said Agreement was not allowed read or

permitted the defendant to suggest the corrections therein. The said Draft was already signed by the Plaintiffs herein along with the stamp

of the Notary Registration Number and signature of the Notary. The EOW Officers compelled the defendant to sign the said Agreement in

their presence and taken the signature of the Defendant upon the said Agreement in the EOW Office at Crawford Market, Mumbai. For the

said Illegal Act the Officers namely Mr. Omkant Chincholikar, I further say that at the signature of the said document only Plaintiffs No. 1

was present and the Notary Advocate Mr. Ramji Pandey was present. Therefore Notary Advocate Mr. Ramji Pandey and the Investigation

Officer, EOW are necessary and proper party to the present suit. I say that, the rest of the parties viz., Plaintiffs no. 2 along with Advocate

Mr. Ameet Mehta was not present at the EOW Office when the said documents were signed by the defendant.

Mr. Ghadigaonkar submitted that even a plain reading of the Plaint made it clear that the said Agreement had been entered into during the course of

the investigation by the EOW. He invited my attention to the following paragraphs of the Plaint in support of his contention viz.,

“25. The Plaintiffs have also filed a complaint dated 19/03/2021 with the Economic Offense Wing (EOW) of the Mumbai Police which

complaint was registered as Complaint bearing no. P.E. 140/2021. The EOW authorities summoned the Defendant and Manisha to the head

Quarters as a part of the investigation process. The Plaintiffs crave leave to refer to the rely upon the complaint filed with the EOW when

produced.

26. It is pertinent that the Defendant and Manisha have admitted their liability before the EOW authorities pursuant to which negotiations

were held between the parties to resolve the issue of non-payment and return of monies by the Defendant and Manisha. The Plaintiffs being

in dire need of their monies advanced to the Defendant and Manisha, agreed as and by way of a settlement/compromise to a significant

reduction in the money, having no other recourse for recovering the same from the Defendant and Manisha.

27. Negotiations were held before and under the supervision of the EOW authorities. In these circumstances, the parties executed a

Settlement Agreement dated 21st September 2021 (“Settlement Agreement”) where under the Defendant inter alia agreed to repay a

total sum of Rs.4,00,00,000/- (Rupees Four Crores only) as full and final settlement to the Plaintiffs on or before 31.11.2021. (Hereinafter

referred to as “the settlement amount” for the sake of brevity). Hereto annexed and marked as EXHIBIT H is a copy of the Settlement

Agreement dated 21/09/2021.

Mr. Ghadigaonkar therefore submitted that since the said Agreement had not been entered into out of the Defendant’s own free will but had been

entered into on account of the threat and coercion by the EOW during the course of the investigation the Plaintiffs were not entitled to any reliefs

based upon the Settlement Agreement.

9. Mr. Ghadigaonkar invited my attention to Section 10 of the Indian Contract Act, 1872 (Ã¢â‚¬Å“the Contract ActÃ¢â‚¬) to submit that since the Settlement

Agreement had not been made by the free consent of the Defendant, the same was void. He also invited my attention to Sections 14, 15 and 16 of the

Indian Contract Act which define Ã¢â‚¬Å“free consentÃ¢â‚¬, Ã¢â‚¬Å“coercionÃ¢â‚¬ and Ã¢â‚¬Å“undue influenceÃ¢â‚¬ respectively. He then invited my attention to Section

16(2)(3) and inter alia provides thus:-

16(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it

or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the

person in a position to dominate the will of the other.

He thus submitted that the said Agreement had been executed on account of the undue influence exerted by the EOW upon the Defendant. He

submitted that this was also apparent since no amount was received by the Defendant from the Plaintiffs, and thus there was no question of the

Defendant having to make any payment to the Plaintiffs.

10. Learned counsel submitted that the cheques given to the Plaintiffs had been given towards security without accepting any liabilities and those

cheques were misused by the Plaintiffs against the Defendant. He submitted that the cheques were issued on the assurance of the Plaintiffs that the

Plaintiffs would advance a loan to the Defendant but no such loan was advanced. He submitted that the Plaintiffs had thereafter misused the cheques

which compelled the Defendant to file a complaint under Section 156(3) of the Cr.P.C. before the Metropolitan Magistrate Court.

11. Without prejudice to the aforesaid submissions, Mr. Ghadigaonkar then without prejudice to his contention submitted that the Plaintiffs had failed

and neglected to adhere to their obligations after execution of the Settlement Agreement. He submitted that the Plaintiffs were to withdraw the cases

pending before the Metropolitan Magistrate Court (Andheri) but the same were not withdrawn by the Plaintiffs. Learned counsel submitted that the

Officer of the EOW, who appeared as a mediator between the parties, was a necessary and proper party to the present Suit. He submitted that the

nonjoinder of the Officer of the EOW rendered the suit bad for nonjoinder of necessary party. In light of the above, Mr. Ghadigaonkar submitted that

the Defendant was entitled to unconditional relief to defend the present Suit.

Submissions in Rejoinder

12. Mr. Bharucha, submitted that the contention of the learned counsel for the Defendant that the said Agreement was entered into by force and/or

coercion was entirely misplaced and untenable. Mr. Bharucha invited my attention to clause 11 of the said Agreement which recorded that the said

Agreement had been entered into by the parties out of their own free will and consent and without any pressure or undue influence of any nature.

13. Mr. Bharucha thus submitted that there was no question of the Defendant now alleging that the Settlement Agreement was entered into by force

and/or coercion. Without prejudice to his contention, Mr. Bharucha submitted that when force and/or coercion is alleged, it is necessary for the party

who makes the allegation to give specific particulars in respect of the same. He invited my attention to Order VI Rule 4 of the Code of Civil

Procedure, 1908 which reads thus:-

“4. Particulars to be given where necessary. - In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful

default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid,

particulars (with dates and items if necessary) shall be stated in the pleading.”

Mr. Bharucha submitted that the Defendant had not adequately supported its contention of threat and coercion with the necessary details as required

in law. He submitted that the allegation of force and/or coercion was therefore merely a bald allegation and completely unsubstantiated and therefore

not enough to raise a triable issue.

14. Insofar as the contention that no monies were paid/advanced to the Defendant, Mr. Bharucha submitted that the said contention was in the nature

of a red herring. He reiterated that the present Summary Suit was based upon the said Agreement by and under which the Defendant had agreed and

undertaken to make payments of the amounts more particularly mentioned therein. He submitted that therefore for the Defendant to now contend that

the Defendant had not received any monies was a plainly dishonest defence. He submitted that the contention that the said agreement had been

entered into by force and coercion was only taken in an attempt to buttress and bolster this dishonest defence. He submitted that the Defendant had

issued Bills of Exchange and Post Dated Cheques to the Plaintiffs which by themselves were evidence enough that the Defendant owed monies to the

Plaintiff. He thus submitted that it was not open for Defendant to now contend that the Defendant was not liable to make payment to the Plaintiffs or

that the Defendant had not received any monies. Mr. Bharucha submitted that even the contention that the mediator was a necessary party was a

legally untenable one given that the Mediator was neither a party to the said Agreement upon which the Summary Suit was based nor was any

amount being claimed from the mediator. He submitted that as the present Suit being a Summary Suit there was no question of joinder of any party

other than the party against whom the claim was made under the written contract.

Reasons and Findings

15. I have heard learned counsel for the parties and considered the case law cited. I shall now deal with each of the defences taken by the Defendant

to resist the present Summons of Judgment.

Suit barred under Section 13 of the Money Lenders Act.

16. The law pertaining to when a party can avail of the defence of money lending has been elaborately set out in the judgment of this Court in the case

of Bipin Vazirani (supra). The said judgment makes clear that in order to attract the bar under Section 13 of the Money Lenders Act, it is imperative

for the Defendant to establish that the Plaintiff carries on the business of money lending. In order to establish this it is necessary for the Defendant to

show inter alia that the Defendant is/was systematically, regularly, repetitively and continuously lending money/advancing loans from which an

appreciable revenue is/was being generated for the Defendant. It is clear that not every loan is axiomatically a money lender transaction for the

purpose of the Money Lenders Act nor is there any such presumption in law. In the present case, the only case pleaded in support of the contention of

Money Lending in the Affidavit-in-Reply is viz.,

“I say that the above suit is filed for recovery of Amount under the Loan Transaction and is therefore, barred by Section 13(1) of the Maharashtra

Money Lending (Regulation) Act, 2014. I say that the present suit is not maintainable, and therefore, unconditional leave to be granted to the

Defendant. I say that the Money Lenders Act categorically defines the work of Money Lender, debtor, business of money

lending and loan. I say that the present suit is covered under the definition of a Money Lender and therefore the Plaintiffs are

required to obtain a license from the office of the Assistant Registrar of the area as per the provisions of Section 5 of the Act. I say that the Plaintiffs

does not have any license and therefore by virtue of the provisions of Section 13(1) of the Money Lenders Act, the present suit is barred.

It is thus clear that apart from the above there is nothing even remotely pleaded to demonstrate that the Plaintiffs are engaged in and/or are carrying

on the business of money lending. Thus, I find that the contention is entirely without substance and devoid of merit. Additionally, I must note that it is

indeed most curious that the Defendant on the one hand has taken the plea that he did not receive any monies from the Plaintiffs while on the other

has contended that the Plaintiffs are in the business of money lending.

Settlement Agreement is insufficiently stamped.

17. The contention that the said Agreement is insufficiently stamped is also one which only needs to be stated to be rejected. Firstly, the Defendant

has not specified what according to the Defendant the deficiency in the stamp duty is nor has the Defendant pointed out the relevant provisions of the

Stamp Act under which the insufficiency of stamp duty is said to be. Secondly, it is well settled that the Stamp Act is a fiscal measure enacted with

the object to secure revenue for the State on certain classes of instruments and it is not enacted to arm a litigant with a weapon of technicality to meet

the case of the opponent. However, even assuming that the said Agreement is insufficiently stamped, this contingency has been dealt with in the

judgment of this Court in the case of Kapil Puri (supra). I find that the same squarely applies to the facts of the present case and thus the defence of

insufficiency of stamp of the said Agreement is also a defence which is devoid of any merit and therefore deserves to be rejected.

Threat and Coercion

18. Now coming to the Defendant's contention that the said Agreement was signed by the Defendant under threat and coercion exerted upon the

Defendant by the officers of the EOW. While the Defendant has taken this plea, what needs to be determined is whether such a plea as taken in the

present case is a plausible defense and one which would entitle the Defendant to unconditional leave to defend the present Suit. In this context it is

essential to note the following, viz.

i. This plea is taken for the first time by the Defendant only in the Affidavit-in-Reply to the Summons for Judgment and has never been raised before.

Given the fact (a) it is the Defendant's contention that the Defendant had not received any monies from the Plaintiffs and (b) that under the said

Agreement the Defendant had agreed and undertaken to make payment to the Plaintiffs of an amount of Rs.4,00,00,000/- surely the Defendant would

have raised a protest in respect of the said Agreement immediately and/or soon after the same was executed, especially if the same was executed in

the manner that is now being suggested by the Defendant. This has not been done either in correspondence or by way of a complaint against those

who allegedly exerted the threat and/or coercion upon the Defendant.

ii. Also, it is crucial to note viz.,

a. That the Defendant has not denied the three cheques which have been issued (two jointly with the Defendant's wife (Manisha Punia) and one

in the Defendant's sole name) in favour of the Plaintiffs totaling to an amount of Rs.6,50,00,000/-. Thus the total liability of the Defendant under

the three cheques was Rs.6,50,00,000/-

b. It is not the Defendant's case that these cheques were given under threat and/or coercion. The Defendant has, for the first time, in the

Affidavit-in-Reply contended that the same were issued for a loan that was never advanced. The record is to the contrary atleast insofar as the

amounts advanced to the Defendant's wife, the same are supported by bank statements. Insofar as the amount of Rs.4,50,00,000/- stated to be

advanced by the Plaintiffs to the Defendant, while the Plaintiff does not annex any acknowledgment/proof of this, the Defendant has admittedly issued a

cheque for the said amount to the Plaintiffs. The Defendant has not pleaded that this was issued under threat and/or coercion.

c. That the total liability of the Defendant under the said three cheques (not stated to be issued under threat and/or coercion) was Rs.6,50,00,000/-

which under the said Agreement (stated to entered into by threat and/or coercion) stood reduced to Rs.4,00,00,000/-.

iii. Additionally it is crucial to note that the Defendant has albeit on a without prejudice basis relied upon the said Agreement to resist the present

Summons for Judgment. The Defendant has in paragraph 14 of the Affidavit-in-Reply pleaded as follows:-

“14. At the outset and without prejudice, I state that, the clauses of the said Agreement Clearly states that, after the execution of the said

Settlement Agreement, the Plaintiffs shall withdraw the Complaints pending before the various Authorities and also before the Hon’ble Andheri

MM Court but those are not withdrawn and on the contrary the said Plaintiffs has made an Application for Warrant against the said Defendant on

various occasions in the said Complaints filed u/s 138 of N.I. Act. Therefore, Plaintiffs have not obliged with the conditions as stated in the said

Agreement therefore the said Agreement is not acted and upon there is no question to pay any amount as claimed by the Plaintiffs.

I therefore find that in the facts of the present case the defence of threat and coercion to be more improbable than plausible. Serious allegations like

threat and coercion cannot be made in a casual manner. The party pleading threat and/or coercion must plead the precise nature of the threat and/or

coercion, the manner of use such threat and/or coercion and the unfair advantage obtained by the person exerting such threat and/or coercion. If this

is not done, then it would amount to putting a premium on dishonesty by giving an impetus to a party seeking to resile from an Agreement to simply

plead threat and/or coercion and make allegations (in this case against officers of the EOW) without even attempting to substantiate them. This is a

practice which must necessarily be deprecated and certainly not encouraged.

19. Additionally, the contemporaneous conduct of the party who pleads threat and/or coercion must also be seen. In the present case there is

absolutely no material placed on record by the Defendant to show that the Defendant had protested and/or raised any grievance qua the said

Agreement before the filing of the Affidavit-in-Reply. No complaint has been filed by the Defendant against the officers who the Defendant has

alleged threatened and/or coerced the Defendant to sign the said Agreement. The Defendant has also not once before filing the present Affidavit-in-

Reply alleged that no monies were received by the Defendant from the Plaintiff. The record in fact reflects (a) that the Defendant has not denied

issuance of the three cheques amounting to Rs.6,50,00,000/- (b) under the said Agreement the liability of the Defendant stood reduced to

Rs.4,00,00,000/-. Therefore, under the said Agreement, there was a substantial reduction in the liability of the Defendant and no corresponding benefit

to the Plaintiff. The allegation of threat and/or coercion would assume that the Defendant was required to act in a manner detrimental to the

Defendant and one which favours the Plaintiff. In this case it clearly appears to the contrary.

Defendant has not received any money

20. The Plaint sets out (a) that monies were advanced by the Plaintiffs to the Defendant’s wife (Manisha Punia) which is duly supported by bank

statements (b) that the amount of Rs. 4,50,00,000/- was advanced in cash by the Plaintiffs to the Defendant. Insofar of the cash amount, there is no

acknowledgment/proof of receipt which has been relied upon. However the Defendant has issued a cheque of Rs.4,50,00,000/- to the Plaintiff No.1

which corresponds to this amount. Issuance of this cheque has not been denied however the Defendant now contends for the first time in the

Affidavit-in-Reply that the same was issued for a loan that was never received. Again, there was no protest raised prior in point of time by which the

defendant has contended that no loan was received from the Plaintiff No.1 despite issuance of the cheque. There is also no explanation forthcoming

as to why the Defendant would issue a cheque for such a large amount if the Defendant had not received this money from the Plaintiffs. The

background and context in which the said Agreement was entered into is also most relevant when considering this contention of the Defendant. The

record bears out that the Plaintiffs had advanced monies to the Defendant's wife (Manisha Punia) via cheques/bank transfers. The record bears

out that the Defendant had issued three cheques, two jointly with his wife for the amounts advanced by the Plaintiffs to the Defendant's wife

(Manisha Punia) and one in his sole name for the amount stated to be advanced in cash by the Plaintiffs to the Defendant. The record bears out that

these cheques were all returned dishonored. The record bears out that prior to the filing of the present Affidavit-in-Reply, there was no dispute/denial

of liability raised by the Defendant in respect of these three cheques or the non-receipt of any money. The record also bears out that the first time in

dispute of non-receipt of monies was raised by the Defendant was in the present Affidavit-in-Reply. However, the Defendant has nowhere denied (a)

that monies were received as stated in the Plaint by the Defendant's wife (Manisha Punia) from the Plaintiffs and (b) that the Defendant had

issued joint cheques to the Plaintiffs for the very same amounts that were advanced to the Defendant's wife (Manisha Punia) by the Plaintiffs it

would not lie in the mouth of the Defendant to now contend that the amounts were received by the Defendant from the Plaintiff/s. since issuance of

these cheque were never denied or disputed. The Defendant has now sought to ignore all of this in the defence now taken.

21. I have considered the submissions made and the defenses raised. Insofar as the defense of insufficiency of stamp and money lending are

concerned, the same are completely devoid of merit and I have no hesitation in holding that they are frivolous and vexatious. The only one aspect of

the matter which I cannot escape taking note of is that while the Plaintiff has pleaded that an amount of Rs.4,50,00,000/- in cash was advanced to the

Defendant, the Plaintiff has not produced any proof in respect thereof save and except to rely upon the cheque of the same amount issued by the

Defendant to Plaintiff No. 1. The Defendant has however contended that this was given towards security for a loan that was never received. While

the Suit is not based on the dishonor of the cheque/s and is admittedly based on the said Agreement, the fact that the Plaintiff has not produced proof

of receipt of money by the Defendant coupled with the plead of threat and coercion taken by the Defendant, would entitle the Defendant to a

conditional order. This is because I have already held that this plea though taken appears to be more improbable than plausible, however in keeping

with the principles laid down by the Hon'ble Supreme Court in the case of IDBI Trusteeship Services Limited Vs. Hubtown Limited I deem it fit

to grant the Defendant a conditional order for leave to defend the present Suit. Therefore, I pass following order:-

i. The Defendant is granted leave to defend the Suit, on and subject to deposit of a sum of Rs.4,00,00,000/- with this Court within eight weeks from

today;

ii. Upon such deposit being made, the Prothonotary shall invest the amount deposited by the Defendant in fixed deposit/s of a nationalized bank initially

for a period of thirteen months and thereafter renewable from time to time and to abide by orders that may be passed in the present Suit;

iii. Written statement to be filed within four weeks after making such deposit;

iv. The suit to come up for directions after twelve weeks.

22. The Summons for Judgment is disposed of in the above terms.