

(2013) 02 DEL CK 0359

Delhi High Court

Case No: IA No. 1804 of 2012 in CS (OS) No. 922 of 2010

Puneet Kumar
Agarwal

APPELLANT

Vs

M/s. Imaginations
Agri Exports and
Others

RESPONDENT

Date of Decision: Feb. 19, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 37 Rule 3(5), Order 7 Rule 10
- Negotiable Instruments Act, 1881 (NI) - Section 138, 20, 87

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Neeraj Gupta and Mr. Arvind Vashistha, for the Appellant; Rahul Shukla and Mr. B.B. Shukla, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.

The plaintiff has instituted this suit under Order 37 of the CPC (CPC) on the basis of a dishonoured cheque of the defendant No. 1, a partnership firm of which the defendants No. 2 to 4 are partners, for a sum of Rs. 21,21,550/- together with interest at the rate of 15% in the sum of Rs. 4,50,850/- for the period prior to the institution of the suit i.e. for recovery of a total sum of Rs. 25,72,400/-. Summons for appearance and thereafter summons for judgment were issued. On 27.02.2012, finding that the defendants No. 1 & 2 had not entered appearance within the prescribed time, the suit, insofar as against the defendants No. 1 & 2, was decreed. RFA (OS) No. 33/2012 was preferred by the defendants No. 1 & 2 there against and which was allowed vide judgment dated 09.04.2012 (corrected on 30th May, 2012) and the matter remanded. Arguments on the application of the defendants for leave to defend have been heard. It is the case of the plaintiff, (i) that he and the defendant No. 2 Mr. Tarun Gautam had in or about the year 2000-03 worked

together in a company; (ii) that the defendant No. 2 even after leaving the employment remained in touch with the plaintiff and informed the plaintiff that he along with the defendants No. 3 and 4 viz. Mrs. Ratnesh Gautam and Mr. Sumit Gautam, had commenced business in partnership in the name and style of defendant No. 1 Firm; (iii) that the defendants No. 2 to 4 in the year 2006-07 persuaded the plaintiff to join the defendant No. 1 Firm as a "working partner", on the understanding that the amounts given by the plaintiff to the defendant No. 1 Firm and/or incurred by the plaintiff in the business of the defendant No. 1 Firm would be returned to the plaintiff together with interests at the rate of 2% per mensem; (iv) however though the terms and conditions orally agreed to, were to be reduced into writing but were not so reduced but the plaintiff continued to work on the assurance of the defendants No. 2 to 4; (v) that the plaintiff has given/incurred a total sum of Rs. 21,21,550/- to the defendant No. 1 Firm and/or on behalf of the defendant No. 1 Firm and out of which Rs. 10,00,000/- were given by way of cheques in the name of the defendant No. 1 Firm; (vi) the plaintiff in para No. 11 of the plaint has given the break up of the said amount of Rs. 21,21,550/- under as many as 23 heads; (vii) that the plaintiff so remained associated with the defendants up to March/April, 2008 and upon the failure of the defendants to return his monies filed a complaint on 22.06.2008 with the Police against the defendants; that even before the Police Officials, the defendants assured to return the amount due to the plaintiff; (viii) that on 15.10.2008 the plaintiff received a registered letter dated 12.10.2008 under the initials of defendant No. 2 enclosing the cheque aforesaid for Rs. 21,21,550/- in favour of the plaintiff; however the said cheque on presentment was dishonoured for the reason of "insufficiency of funds" in the account of the defendant No. 1 Firm; (ix) that prior to the institution of the present suit, a complaint of offence u/s 138 of the Negotiable Instruments Act, 1881 (NI Act) was also lodged by the plaintiff against the defendants and which is pending consideration.

2. The defendants seek leave to defend the suit on the following pleas:

(i) that this Court has no territorial jurisdiction to entertain this suit. The amount of Rs. 10,00,000/- given by the plaintiff to the defendant No. 1 Firm was vide two cheques of Rs. 5,00,000/- each drawn at Chennai where the plaintiff was then working and deposited by the defendant No. 1 Firm in its account with the Bank at Dehradun and that the plaintiff has falsely stated that the aforesaid cheques were drawn at Delhi. The defendants are also residing at Dehradun;

(ii) that no letter dated 12.10.2008 was written by the defendants to the plaintiff and the said letter has been forged by the plaintiff;

(iii) that the defendant No. 1 Firm is only liable to pay a sum of Rs. 12,20,000/- to the plaintiff which the plaintiff had loaned to the defendant No. 1 Firm and no other amount;

(iv) that the dishonoured cheque was stolen in the year 2007 as is evident from the Statement of Accounts, as the cheques of the preceding two serial numbers had been encashed from the defendants account on 05.05.2007 and the cheque of the succeeding serial number had been encashed from the defendants account on 07.05.2007. It is further pleaded "that cheque in question i.e. cheque No. 998688 must have been signed at around the same time by the defendant No. 2 which was subsequently stolen from his possession.

3. The defendants, besides applying for leave to defend have also filed IA No. 3168/2012 under Order 7 Rule 10 of the CPC for return of the plaint owing to this Court not having territorial jurisdiction to entertain the suit.

4. The counsel for the defendants has argued that the dishonoured cheque in the present case cannot be an admission of liability on the part of the defendants since from the date of the encashment of the cheques of the serial numbers immediately before and after the said cheque, it is apparent that the said cheque is of May, 2007 and on which date as per the averments in the plaint also, the question of the defendants admitting liability in any amount by giving a cheque therefor to the plaintiff did not arise. Attention is invited to Section 87 of the NI Act providing that any material alteration of a negotiable instrument renders the same void. The counsel for the defendants on the aspect of territorial jurisdiction has invited attention to [Mountain Mist Agro India \(Pvt.\) Ltd. and Another Vs. S. Subramaniam](#), and on [Arinits Sales Pvt. Ltd. Vs. Rockwell Plastic Pvt. Ltd. and Others](#), laying down that it is the situs of the bank on which the cheque is drawn and not the situs of the bank where the cheque is presented, which vests jurisdiction. Reliance is further placed on [BPD L Investments \(Pvt.\) Ltd. Vs. Maple Leaf Trading International \(Pvt.\) Ltd.](#), laying down that the suit under Order 37 of the CPC cannot be maintained on the basis of stale cheques and granting unconditional leave to defend in the facts of that case.

5. During the course of hearing, even though there is no plea to the said effect, but by way of abundant caution, it was enquired from the counsel for the defendants whether the defendants had lodged any report/complaint with the police or with their Bankers in the year 2007 of the loss or theft of the cheque on the basis whereof this suit has been filed.

6. The answer is in the negative.

7. Per contra, the counsel for the plaintiff has with reference to the documents argued that the cheques for Rs. 5,00,000/- each by which the plaintiff had given the sum of Rs. 10,00,000/- to the defendant No. 1 Firm were drawn on account of the plaintiff with the Soami Nagar, New Delhi branch of the United Bank of India and deposited in the account of the defendant No. 1 Firm with the Union Bank of India, Anna Nagar, Chennai and cleared through centralized clearing. He has thus contended that this Court as per the judgment cited by the counsel for the

defendants themselves has territorial jurisdiction. Attention is also invited to the photocopy of a document titled "Outstanding Amount Statement as on 29/02/2008" (and original of which is stated to be filed in the proceedings u/s 138 of the NI Act) where the defendant No. 1 Firm under the signature of defendant No. 2 as Managing Partner has confirmed the total outstanding towards the plaintiff at Rs. 21,21,550/-. Attention is yet further invited to the balance sheet of the defendant No. 1 Firm as on 31.03.2007 where unsecured loan of the plaintiff to the defendant No. 1 Firm of Rs. 10,00,000/- is shown. Qua the challenge by the defendants to the letter dated 12.10.2008 under cover of which the cheque for Rs. 21,21,550/- is stated to have been sent by the defendants to the plaintiff, it is stated that the said letter was received by the plaintiff at Delhi by registered post AD in an envelope bearing the stamp of posting of the Post Office at Dehradun. It is contended that the denial by the defendants with respect to the said letter is vague and without any particulars. Attention is also invited to the second proviso to Order 37 Rule 3 (5) of the CPC to contend that in the face of the admission by the defendants of the liability in the sum of Rs. 12,20,000/-, the defendants before being heard on the application for leave to defend are liable to be directed to deposit the said amount. Reliance is placed on [Amit Garg Vs. Raminder Singh](#), where on the basis of comparison of the signatures on the application for leave to defend and the disputed signatures, the leave to defend was refused. Relying on Section 20 of the NI Act, it is contended that delivery of a blank cheque is prima facie authority to the holder thereof to fill up the same. Reliance in this regard is placed on [V.K. Enterprises Vs. Shiva Steels](#), and [Rajni Kumar Vs. Suresh Kumar Malhotra and Another](#), and [General Rubber Works and Another Vs. Continental Carbon India Ltd.](#), [National Small Industries Corp. Ltd. Vs. Novavision Electronics \(P\) Ltd. and Others](#), [Brakewel Automotive Components \(India\) Pvt. Ltd. Vs. Karpagga Brakewel and Others](#) & M/s. Margra Industries Ltd. Vs. M/s. Mediterranean Shipping Company, S.A., (FAO (OS) 198/2006 decided on 21.03.2012).

8. The counsel for the defendants in rejoinder has contended that the original letter dated 12.10.2008 has not been filed by the plaintiff in Section 138 NI Act proceedings also.

9. The counsel for the plaintiff has responded by stating that in view of the multifarious litigation, the original has not been filed but can be produced.

10. The defendants, in their leave to defend application, have not disputed/controverted the receipt of the legal notice. It was enquired from the counsel for the defendants whether any reply thereto was given. The answer is in the negative.

11. I may further add that the certified copies of the dishonoured cheque, its return memo, the letter dated 12.10.2008, its envelope, legal notice dated 13th December, 2008 originals of which have been filed in the Section 138 NI Act proceedings, are on record in the present case.

12. I have considered the rival submissions. The defendants, either by express admission or by non traverse in the application for leave to defend, have admitted the factum of, (a) the plaintiff having been known to the defendant No. 2; (b) the plaintiff having joined the business carried on by the defendants No. 2 to 4 in the name and style of defendant No. 1 Firm and having worked therefor and of the plaintiff having in the course of his said association loaned a sum of Rs. 12,20,000/- to the defendant No. 1 Firm.

13. The dispute thus is really of the balance sum of Rs. 9,01,550/- out of the total principal claim amount of Rs. 21,21,550/-. The claim for the said amount is on account of various expenses which the plaintiff claims to have incurred on the oral assurance of, and in accordance with the verbal understanding with, the defendants. The claim for the said amount would not fall within the ambit of Order 37 of the CPC save on the basis of the amount thereof being included in the dishonoured cheque for the total sum of Rs. 21,21,550/-, out of which as aforesaid Rs. 12,20,000/- is admitted as due.

14. In the circumstances, in my opinion, the whole controversy revolves around the credence to be given to the defence of the defendants vis-à-vis the said cheque.

15. As far as the reliance by the plaintiff on the letter dated 12.10.2008 under cover of which the plaintiff claims the said cheque was sent by the defendants to the plaintiff is concerned, in my view, at this stage, the said letter cannot be accepted. I do not give any weightage to the envelope containing the letter dated 12.10.2008 bearing the stamp of postage at Dehradun. If indeed the letter dated 12.10.2008 has been forged and fabricated by the plaintiff as alleged by the defendants, it was not at all difficult for the plaintiff to have the same posted from Dehradun.

16. Though the counsel for the plaintiff has argued that signatures of the defendant No. 2 thereon are similar to the signatures of the defendant No. 2 on the leave to defend application and though at least one Single Judge of this Court in Amit Garg supra has at the stage of leave to defend undertaken ocular comparison of the disputed signature with the admitted signature, but I refrain from venturing into the said arena.

17. What is significant is that the defendants do not deny that the dishonoured cheque is drawn on account maintained by the defendant No. 1 Firm with its bankers and that the same bears the signatures of the defendant No. 2 as the Managing Partner of the defendant No. 1 Firm. The defendants seek to discredit the said cheque only by demonstrating from their Statement of Accounts that the cheques bearing serial numbers immediately preceding and following the serial number which the dishonored cheque bears, were encashed in May, 2007. However the counsel for the plaintiff during the course of hearing has from the same Statement of Account of the defendants shown that it is not as if that the cheques issued by the defendants are always debited to their account chronologically as per

their serial number in the cheque book. It is demonstrated from the said Statement of Account that several other cheques bearing subsequent serial numbers are also debited on earlier dates. It is thus argued that the defendants are in the habit of issuing cheques from their cheque book haphazardly and not seriatim.

18. The plea of the defendants of the cheque having been stolen in the year 2007 is bereft of any particulars whatsoever. The defendants, except for stating that "the dishonoured cheque must have been signed and that the same was subsequently stolen" have not explained, why it was signed, to whom it was intended to be issued, from whose custody it was stolen, why no complaint of theft was not lodged and why its payment was not stopped and as to how the same landed in the custody/possession of the plaintiff. The use of the words "stolen by the defendants" also shows that if it had been so, in the ordinary course of business a Police complaint or at least a report to the Bank for stopping the payment of the cheque would have been made. The defendants are carrying on business and have been preparing and filing balance sheets. Upon a signed cheque going missing, at least at the end of the year while preparing the balance sheets and for which audit would essentially have been conducted, the missing cheque would have been detected and at least then report would have been made.

19. What also intrigues me is that the defendants, inspite of receipt of the legal notice did not reply thereto. Ordinarily a person/party faced with the allegation of commission of an offence u/s 138 of the NI Act would immediately respond, specially if the cheque was stolen. The conduct of the defendants shows that the defendants were sitting over the fence and the pleas taken in the leave to defend are nothing but an afterthought.

20. Even if one is to believe, though not pleaded, that the dishonoured cheque was given to the plaintiff in blank as security for the investments/contribution of the plaintiff or amounts incurred by the plaintiff, made in/to/on behalf of the defendant No. 1 Firm, the defendants having done so, impliedly authorized the plaintiff to fill up the amount thereon and realize thereunder the monies due to him. It is significant that though the defendants admit parting of ways with the plaintiff in the year 2008 but even then did not care to stop payment of the said cheque which would have been done if the defendants even then felt that the plaintiff may misuse the said cheque. It is settled law that it is open to a person to sign and deliver a blank or incomplete instrument, and it is equally open for the holder to fill up blanks and specify the amount therein. In *Scholfield Vs. Lord Londesborough* (1895) All E R 282 it was held that whoever signs a cheque or accepts a bill in blank and then puts it into circulation must necessarily intend that either the person to whom he gives it, or some future holder, shall fill up the blank which he has left. This common law doctrine was also affirmed by Justice Macnaghten in *Griffiths Vs. Dalton* (1940) 2 KB 264 where it was held that the drawer of an undated cheque gives a prima facie authority to fill in the date. The Supreme Court in [T. Nagappa Vs. Y.R. Muralidhar](#),

discussing the scope of Section 20 of the Negotiable Instruments Act held that by virtue of the said provision a right is created in the holder of the cheque, which prima facie authorises the holder to complete the incomplete negotiable instrument, subject to conditions contained therein. In [Vijender Singh Vs. Eicher Motors Limited and Another](#) it was held a blank cheque signed and handed over meant that the person signing it had given implied authority to the holder to fill up the blank which he had left and the person issuing a blank cheque is to understand the consequences of doing so and cannot escape his liability only on the ground that blank cheque had been issued. The same view has also been affirmed in [MOJ Engineering Systems Ltd. and Others Vs. A.B. Sugars Ltd.](#), and [Purushottam Maniklal Gandhi Vs. Manohar K. Deshmukh and Another](#), .

21. The entire conduct of the defendants is in consonance with their admission of liability and which makes me also believe the Statement of Account on which the counsel for the defendants even during the hearing did not dispute the signatures or sought to give an explanation therefor.

22. As far as the plea of the defendants of territorial jurisdiction is concerned, the defendants have not disputed that the plaintiff is now a resident of Delhi. The defendants admit their liability at least in the sum of Rs. 12,20,000/- to the plaintiff. I have during the hearing asked the counsel for the defendants whether the Courts at Delhi would not have territorial jurisdiction to entertain the suit on the principle of debtor must seek the creditor (See [L.N. Gupta Vs. Tara Mani](#), [State of Punjab Vs. A.K. Raha \(Engineers\) Ltd.](#), and [Mrs. Shradha Wassan and Others Vs. Mr. Anil Goel and Another](#) . The defendants as debtors, even if situated out of the territorial jurisdiction of this Court, are required to discharge their admitted liability to the plaintiff at Delhi and this Court on the basis of the said principle alone, will have territorial jurisdiction. No answer is forthcoming from the counsel for the defendants.

23. I also find merit in the plea of the plaintiff of the cheques for Rs. 5,00,000/- each having been drawn up on account of the plaintiff with the branch of the Bank at New Delhi. It is the branch of the Bank with which the account is held which is of relevance for determining territorial jurisdiction. In today's day and time of electronic banking, it is possible to operate an account from any branch whatsoever.

24. I am therefore convinced that the pleas of the defendants in the application for leave to defend do not disclose any substantial defence and are frivolous, vexatious and moonshine.

25. The application of the defendants for leave to defend is accordingly dismissed. Axiomatically, the plaintiff becomes entitled to a decree for the principal sum of Rs. 21,21,550/-. However, as far as the claim of the plaintiff for interest is concerned, no rate of interest having been agreed upon between the parties, the plaintiff cannot be awarded interest at any rate in excess of the rate which the fixed deposit receipts

of nationalized banks on an average fetch. The plaintiff is thus awarded interest from the date of dishonour of the cheque and till the date of institution of the suit, pendente lite and future till the date of payment, at the rate of 10% per annum. The plaintiff shall also be entitled to costs of this suit as per schedule.

Decree sheet be drawn up.