

26.04.2024

Present: Sh. Santosh Chauriah, Ld. Counsel for plaintiff (through VC).
Sh. Anup Verma, Ld. Counsel for defendants.

1. Ld. Counsel for plaintiff submits that, plaintiff is not inclined to settle the matter for Rs. 3,80,000/- as proposed by defendants.

2. Arguments heard on leave to defend application as well on application u/o I Rule 10 CPC for deletion of defendant no. 2, on behalf of both parties at length.

3. Briefly stated, present suit for recovery of Rs. 5,00,000/- filed on behalf of the plaintiff against defendant towards recovery of part of investment amount i.e. to be paid by defendants. It is averred that, defendant no. 1 is a director of Indiboom Infratech Pvt. Ltd. and introduced to plaintiff by his neighbour. It is further averred that, plaintiff invested Rs. 1,25,00,000/- (Rupees One Crore Twenty Five Lacs only) with defendant no. 1 and his company during the period 2011 to 2015. It is further averred that, initially things were smooth between plaintiff and defendant no. 1 but gradually attitude and approach of defendant no. 1 started to change. Thus, in the year 2015, plaintiff approached defendant no. 1 and asked for security of his investment, upon which defendant no. 1 along with co-director i.e. defendant no. 2 herein entered into an agreement dt. 13.08.2015 and handed over four cheques of Rs. 20,00,000/- each i.e. totaling to Rs. 80,00,000/- towards return of part of investment w.e.f. December, 2015. However, at request of defendant no. 1 said cheques never been represented for encashment and turned stale.

4. It is further averred that, thereafter, defendants issued another two cheques of Rs. 2,50,000/- each dt. 22.03.2018 and 27.03.2018 but, both cheques returned unpaid vide bank memo dt. 04.05.2018. It is further averred that, thereafter, plaintiff started chasing the defendants but defendants were unresponsive. Hence present suit is filed u/o XXXVII CPC.

5. *Per contra*, in its leave to defend application defendant raised two objections. Firstly, they have not been served with entire paperbook until 16.03.2023. Secondly, entire suit of the plaintiff is based upon false and concocted facts.

6. It is averred that, plaintiff was working as a commission agent with Indiboom Infratech Pvt. Ltd. to which defendant no. 1 and 2 are directors. It is further averred that, defendants' company was running a project in *Vrindavan* and plaintiff was working as commission agent for 18 months. It is further averred that, in March, 2018 plaintiff requested defendants to advance some financial help upon which disputed cheques were issued. It is further averred that, plaintiff was permitted to encash said cheques only after earning of commission but, plaintiff left the company in March, 2018 and represented said cheques without any information to the defendant company. Lastly, it is submitted that, defendant no. 2 may be deleted from the array of the parties as he is neither the director nor official of M/s Indiboom Infratech Pvt. Ltd. Hence, leave to defend may be granted.

7. Submissions heard. Record perused.

8. It is well settled law that, the court may at any stage of the legal proceedings delete any party who is not necessary or property party to the

proceedings. In the present matter, plaintiff has filed recovery suit qua defendant no. 1 and 2 on the basis of the cheque issued by them from joint account in discharge of their liability. This court does not find any merit in the submissions made by Ld. Counsel for defendants about deletion of defendant no. 2 as in para no. 5 (i) of their leave to defend's application defendants themselves claim that, they are directors of M/s Indiboom Infratech Pvt. Ltd. Thus, in the considered opinion of this court, presence of defendant no. 2 may be necessary in order to enable the court to effectually and completely to adjudicate upon and settle all the questions involved in the suit. **Hence, application u/o I Rule 10 CPC stands dismissed.**

9. Further, the principles of law for grant or refusal of leave to defend has been well settled by the Hon'ble Supreme Court in *IDBI Trusteeship Services Limited vs. Hubtown Limited, (2017) 1 SCC 568* whereby it was held that, Order XXXVII CPC was subject matter of amendment in the year 1976 and the same has resulted in the difference in the law laid down by earlier judgments i.e., principally *Mechelec Engineers & Manufacturers vs. Basic Equipment Corpn., (1976) 4 SCC 687*. The Apex Court further held that, principles stated in para 8 of *Mechelec Engineers & Manufacturers vs. Basic Equipment Corpn., (supra)* were superseded, given the amendment of Order XXXVII and the binding decision of the Constitutional Bench of four judges in *Milkhiram (India) (P) Ltd. vs. Chamanlal Bros, AIR 1965 SC 1698* would apply. The relevant portion of the judgement summarizing the principles to be followed while adjudicating grant leave to defend in a summary suit are as follows:

“18. Accordingly, the principles stated in paragraph 8 of Mechelec's case will now stand superseded, given the amendment of O.XXXVII R.3, and the binding decision of four judges in Milkhiram's case, as

follows:

- a) *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;*
- b) *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;*
- c) *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 44 see that, such triable issues are not shut out by unduly severe orders as to deposit or security;*
- d) *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.*
- e) *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;*
- f) *if any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court."*

10. In the present matter, plaintiff is claiming amount of disputed cheques i.e. Rs. 5,00,000/- as part refund of investment amount while defendants are claiming it as financial help to the plaintiff i.e. to be encashed only after earning of commission. But, as per defendants since plaintiff left

defendants' company in March, 2018 there was no such point of encashment of said cheques.

11. This court carefully gone through entire material placed on record but, do not find merit in the submissions made by the defendants as defence raised by them *is plausible but improbable*. Thus, in the light of the aforesaid discussion and in the interest of justice, application of defendants for leave to defend stands allowed only **subject to deposit of the 50% of the suit amount in the form of FDR in the name of Ld. Principal District & Sessions Judge, Dwarka Courts, South West District, Delhi i.e. to be paid jointly or severally by defendants within eight weeks from today and deposit the same in court**, which shall be released subject to the outcome of the case. Ahlmad is directed to keep the said FDR in safe custody.

12. Let WS be filed within statutory period, with advance copy to opposite side. Plaintiff would be at liberty to file replication, if any within four weeks thereafter.

13. Both parties are also directed to file affidavit of admission/denial of documents on NDOH.

14. Put up for completion of pleadings, admission/denial of documents and framing of issues on **06.08.2024**.

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 26.04.2024