

ORDER BELOW EXH.27 IN

SUMMARY SUIT NO.827 OF 2016

Mr.N. L. Ramnani, learned advocate for the plaintiff.
Mr. L. V. Mansinghani, learned advocate for the defendant.

CORAM : Prem H. Singh, Judge.

1. The plaintiff has instituted this suit for judgment and decree in terms of recovery of Rs.5,50,000/- with interest.
2. That on service of summons for judgment the defendant has moved this application for leave to defend the suit, unconditionally, contending that plaintiff not come with clean hand;denied due of Rs.5,50,000/- and defendant has never given promissory note to the plaintiff; actually the plaintiff has misused the blank promissory note with signature of the defendant and defendant has never taken Rs.5,50,000/- and plaintiff and his persons are taken the documents, files and promissory notes illegally from the office of the defendant; and no legal dues pending and denied almost all the facts of summons for judgment of the plaintiff and there are triable issues and hence also the leave to defend the suit unconditionally, requires to be granted to the defendant.

3. The plaintiff has filed rejoinder affidavit vide Exh.44 wherein restated the facts of the summons for judgment and denied the facts of the leave to defend application.

4. I have gone through the submission advanced by the ld. advocate for the parties. The learned advocate for the defendant in his written argument vide Exh.45 submitted that the defendant has already deposited Rs.1,25,000/- before the Hon'ble High Court and the same be treated as condition to defend the suit and he has also filed Civil Suit No.534/12 before the City Civil Court which is pending before the Court. Considering record of the matter the plaintiff has produced the documentary evidence vide list at Exh.4 mark-4/1 to 4/3, and defendant has produced the documentary evidence vide list at mark-28/1 to 28/11, it transpires from the record and submission of the learned advocate for the defendant that defendant has already deposited Rs.1,25,000/- before the Hon'ble High Court and the same be treated as condition to defend the suit. From all these documentary evidence, it transpires that the defendant in his leave to defend application raised plausible defence and same are not moonshine, illusory and practically sham and bogus, but the same could only be decide after recording of evidence of either party. Further while considering the record and defence as raised from that it appears that dispute between the parties can only decide if the evidence recorded because the defendant has

challenged his signature on the Promissory Note and on the Cheques. Therefore, considering the above there are numbers of triable issues involves, which requires evidence in trial. Therefore, I am of the humble opinion that the leave to defend application of the defendant require to be granted unconditionally. Hence, I pass following order in respect of this application.

ORDER

- 1 The leave to defend application of the defendant is hereby allowed and the defendant is permitted to defend the suit unconditionally.

- 2 The defendant shall file his written-statement within fortnight from the date of this order.

Pronounced and signed in the open Court today
i. e.15th day of April, 2017.

Date : 15-04-2017

Place : Ahmedabad

(Prem Hansraj Singh)
Judge
UIC No.GJ00746
Small Cause Court No.5.
Ahmedabad.