Common Order below Exh. 10- Plaintiff's Summons for judgment and Exh. 11- Defendant's leave to defend in Spl. Summary Suit No.26/2014

1. Plaintiff paid defendant company Rs. 10,00,000 as short-term deposit for 90 days @ 2.25 interest per month and plaintiff accordingly invested Rs. 10,00,000/- issuing cheque drawn on Ahmedabad bank to defendant company. In return, defendant issued promissory note of Rs. 10,41,072/- and also issued cheque in favour of the plaintiff. Cheque issued by the defendant was dishonoured due to insufficient funds. Defendants thereafter repaid Rs. 1,41,072/- through RTGS on date 12.07.2013 and remaining sum of Rs. 9,00,000/- plus interest is still due from the defendants. So, plaintiff filed this Special Summary Suit. Defendant company appeared and filed it's leave to defend that defendant company has not approached the plaintiff for investment deposit and defendant company has not authorized

any representative to borrow money and execute writings on behalf of first defendant. Defendant company is not liable for any writings given by defendant no. 2. Directors of the company, defendant no. 3 and 4 have no liability.

2) It is alleged that whatever amount is repaid to the plaintiff for Rs. 1,41,072/- is paid as full and final settlement to the plaintiff. It is alleged that plaintiff has said that if the defendant pays that much amount, then it would not be necessary to give any other amount. So, defendant's defend that they are absolved from the liability on payment of Rs. 1,41,072/- towards full and final settlement. The stamp paper on which promissory note is alleged to be given is not a promissory note and no proper stamp paper is affixed on the promissory note. Plaintiff is not holding any license under Money Lenders Act. Plaintiff does not prove that prima facie she is entitled to recover the suit amount

with interest. So, defendant's defense be accepted as unconditional. If we go through the letters given on the letter head of the company, it is an admitted fact that defendant company issued one promissory stamp and a cheque for repayment of the amount of Rs. 10,41,072/- and confirmed the receipt of net proceeds from plaintiff vide it's letter dated 07.02.2013 and also irrevocably undertaken to honour repayment on due date @ 2.25% interest for overdue charges in case of any delay. So, towards investment by plaintiff of Rs. 10,00,000/-, defendants have issued cheque and promissory note on date 08.05.13 for Rs. 10,41,072/- and in case of delay in payments , it is submitted to pay overdue charges @ 2.25 % per month. It is also admitted by defendant that they have paid Rs. 1,41,072/- to the plaintiff and it was paid as full and final settlement towards the debt. But upon the admissions of the defendants itself, nothing to show that defendants have paid the repayment money towards full and final settlement of the total amount. So, the defendant does not substantiate with any evidence that the payment is towards full and final settlement of the amount claimed by the plaintiff. With regard to jurisdiction, defendants have paid through RTGS to the plaintiff in it's account and the dishonoured cheque was received at plaintiff's bank in Ahmedabad. So, under Section 20 (C) of the CPC, the matter falls within the jurisdiction of this Court. Considering all these aspects, defendant company has admitted vide it's letter at Mark 3/1 to repay the amount of Rs. 10,41,072/- through payment by cheque on date 08.05.13 and thereafter only paid Rs. 1,41,072/-. So, Rs. 9,00,000/- were not paid and plaintiff has claimed suit amount of Rs. 10,93,262.50/- along with interest due to delay in payment. So, in view of letters admitted by the defendant's side and the defense of the defendant company suggests that whatever amount has been paid to the plaintiff is towards full and final settlement of the debt is not acceptable and cannot be termed as a good defense. So, in view of above facts, the defense of the defendants is not reliable and trustworthy. So, considering all these aspects, conditional leave is required to be granted to the defendant. So, I pass following order.

ORDER

1) Leave to defense is permitted to the defendant if defendant company deposit Rs. 9,00,000/- into this Court within 30 days of this order, failing which plaintiff would be entitled to the decree ex-parte.

Order pronounced in Open Court.

Date :15.06.2018
Place :Ahmedabad.

[PINAKIN S. JOSHI]
UIC No.GJ00325
Principal Senior Civil Judge,
Ahmedabad [Rural] at Mirzapur.

(V.M. Wadhwani)P.S