

Order below Exh.13 in Summary Suit No.4608/2016**Appearance:-**

Mr. K. L. Chauhan, Ld. Advocate for the plaintiff

Mr. Mihir Lakhiya, Ld. Advocate for the defendant.

Coram: Mr. Daxesh Rajeshkumar Jaguwala, Judge.

O R D E R

1. Read this application, summons for judgment affidavit, plaint, rejoinder affidavit and perused the record of this case. Read the written arguments submitted by the learned advocate for the plaintiff vide Exh.21.

2. The plaintiff has filed this Summary Suit against the defendants under Order-XXXVII of Civil Procedure Code for recovery of amount of Rs.2,25,870/- from the defendants. The plaintiff has joined as peon in the defendants firm in year 1985-86 and the plaintiff and his family members have opened demat accounts and there was an oral agreement to pay Rs.1,000/- per account and the defendants have applied I.P.O from the accounts of the plaintiff from year 2003 to 2006. Thereafter, the said accounts have been closed in year 2006 and when the plaintiff has asked Rs.1,30,000/- of the aforesaid accounts, at that time, the defendants stated that they will pay the said amount with interest @ 12% p.a. after retirement. The plaintiff has retired on 31.12.2013 and when the plaintiff demanded the legal dues from the defendants, the defendants have paid Rs.96,000/- and stated that amount of interest will be given to you later. The defendants have also not given gratuity to the plaintiff and when the plaintiff has asked total amount of Rs.2,25,870/- from the defendants then the defendants have given threats to the plaintiff,

therefore the plaintiff has given notice to the defendants but the defendants have neither given reply nor comply with the said notice. Therefore, the plaintiff filed the present against the defendants and prayed relief as per para-11 of the plaint.

3. The learned advocate for the defendants has argued and reiterated the facts stated in the application for leave to defend and prayed to allow the defendants to defend the suit unconditionally.

4. I have considered the record as well as arguments advanced by both the parties. Read the affidavit filed by both the side and the documentary evidence, which are produced on record. The plaintiff has highly relied upon the documents produced vide Mark-4/1 to Mark-4/14 and on the other side, the defendant has produced documentary evidence vide Mark-14/1 and denied almost all the allegation made by the plaintiff in the plaint in their application for leave to defend and contended that this suit is barred by law of limitation and the this suit is not maintainable under the provisions of Order-37 of C.P.C. There is no agreement by and between the plaintiff and the defendant regarding payment of interest and as such the defendant is not liable to pay any amount to the plaintiff towards interest and the account between the plaintiff and the defendants has been settled and no further amount is payable by the defendants to the plaintiff and there is no cause of action to file the present suit but the plaintiff has filed the present suit to extort the money from the defendants. Rest of the say of the defendants however is in denial in application for leave to defend and therefore, the defendants have prayed to grant

unconditional leave to defend the suit.

5. Looking to the pleadings as well as documentary evidence produced by the parties, learned advocate has specifically raised the issue that the suit is barred by law of limitation as the account has been closed in the year 2006 itself and the present suit is filed in the year 2016. Further, the defendants have produced copy of the receipt given by the plaintiff to the defendants vide Mark-14/1, from which it appears that the plaintiff and defendants have settled the amount and the plaintiff has stated that there is nothing due. Therefore, the defendants have raised issues regarding the suit is barred by law of limitation and also that the amount is settled between them. So looking to the dispute between the parties, further evidence are required to be recorded to decide the dispute between the parties. Therefore, it is required to grant unconditional leave to defend the suit to the defendant. Hence, I pass following order in the interest of justice:-

O R D E R

- (1) The defendants are hereby granted leave to defend the suit unconditionally. The defendants are at liberty to file their written statement within 14 days from the date of this order.
- (2) Accordingly the summons for judgment stands disposed of with no order as to costs.

Pronounced and signed in the open Court today on this 7th day of December, 2017.

Ahmedabad

Date : 07/12/2017

(Daxesh Rajeshkumar Jaguwala)

Judge, UIC No.GJ00973,
Small Causes Court No.9,
Ahmedabad.