

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

IA No. GA 3 of 2021

In

CS 112 of 2020

Evergreen Dealer Private Limited

Versus

Gujarat ECO Textile Park Limited

Mr. Suman Kr. Dutt

Mr. Meghnad Dutta

Mr. Rajesh Upadhyay

... For the plaintiff.

Mr. Phiroze Edulji

Ms. Soumili Choudhury

Ms. Priyanka Bhattacharya

... For the defendant.

Hearing Concluded On : 09.05.2024

Judgment on : 20.06.2024

Krishna Rao, J.:

1. The plaintiff has filed the present application being G.A. No. 3 of 2021 in C.S. No. 112 of 2020 under Chapter XIII A of the Original Side Rules praying for judgment and decree as the defendant has no defence. The plaintiff has filed suit against the defendant praying for a decree for a sum of Rs.96,02,719/- along with interest.
2. The principal officers and the representatives of the defendant company approached the plaintiff for financial help to the tune of Rs.36,00,000/- and on the request of the defendant, the plaintiff lent and advanced a sum of Rs.36,00,000/- to the defendant by way of RTGS drawn on Yes Bank, Dalhousie Branch, Kolkata on 30th December, 2011. The plaintiff lent and advanced the said sum with compound interest at the rate of 12% per annum. On 13th December, 2012, the defendant has paid a sum of Rs.48,865/- being the interest after deduction of Tax Deduction Source for the period from 30th December, 2011 to 31st March, 2012.
3. The defendant has also issued balance confirmation for the financial years 2011-2012, 2013-2014, 2015-2016 and 2016-2017. In the said balance confirmation of account, the defendant has admitted the amount borrowed from the plaintiff. The defendant failed to make the payment to the plaintiff along with the interest, the plaintiff has sent a notice through its Advocate calling upon the defendant to pay the amount along with interest, though the notice was duly served upon the defendant but neither the defendant has paid the amount nor has sent

any reply to the plaintiff. Now the plaintiff is claiming the principal amount of Rs.36,00,000/- and an interest of Rs.60,02,719/- after deducting an amount of the interest of Rs.48,865/-.

4. Mr. Suman Kumar Dutt, Learned Advocate, representing the plaintiff submits that the defendant has paid interest of Rs.48,865/- after deducting TDS and admitted the balance confirmation account for the financial years 2011-2012, 2013-2014, 2015-2016 and 2016-2017 which established that the defendant has the legal obligation to make payment to the plaintiff along with interest.
5. He submits that the defendant has no defence against the claim of the plaintiff and thus the plaintiff is entitled to get judgment and decree under Chapter XIII A of the Original Side Rules of this Court as no issue exists in the suit which requires trial.
6. Mr. Phiroze Edulji, Learned Advocate representing the defendant submits that the plaintiff informed to the defendant that one High Return Agency Private Limited owes certain money from the plaintiff and as per instructions of the plaintiff, the defendant has transferred an amount of Rs.36,00,000/- to one Highreturn Agency Private Limited. He submits that the plaintiff also informed to the defendant that the plaintiff would waive the interest.
7. Mr. Edulji submitted that the plaintiff has also filed a criminal case against the defendant before the Learned Court of Additional

Metropolitan Magistrate at Calcutta under Section 418/420/120B of the IPC and the same is pending for adjudication.

- 8.** Mr. Edulji submitted that the documents appearing at page 29 to 31 of the application of the plaintiff i.e. account confirmation are forged and fabricated documents and the plaintiff has filed the present suit on the basis of manufactured documents.
- 9.** Mr. Edulji submitted that with the intention to repay the amount of Rs. 36,00,000/-, the defendant has issued a cheque No. 000148 to the plaintiff on 1st March, 2016 but the plaintiff did not accept the same and informed the defendant that the Bank Account of the plaintiff company has been frozen by the Income Tax Department and requested the defendant to pay the amount of Rs.36,00,000/- directly to one M/s Highreturn Agency Private Limited as the said firm owes certain amount from the plaintiff.
- 10.** Mr. Edulji submitted that the seal appearing in the alleged account confirmation statement are forged as all the seals are different from each other.
- 11.** He submits that the plaintiff has filed a false case on the basis of forged and manufactured documents knowingly that as per the instructions of the plaintiff, the defendant has transferred the amount of Rs.36,00,000/- in the account of M/s. High Return Agency Private Limited and there is no dues pending against the defendant.

12. Mr. Edulji raised the point of maintainability of the suit as the suit filed by the plaintiff is a commercial dispute as defined under Section 2 (1)(c) of the Commercial Court's Act, 2015.
13. Mr. Edulji relied upon the judgment in the case of **S.M. Asif -vs- Virender Kumar Bajaj** reported in **(2015) 9 SCC 287** and submitted that Judgment on admission is not a matter of right rather is a matter of discretion of the Court. Where the defendant has raised objections which go to the root of the case, it would not be appropriate to pass judgment on admission exercising the discretion under Order 12, Rule 6 of the Code of Civil Procedure, 1908.
14. Heard the Learned Counsel for the parties, perused the materials on record and the judgement relied upon by the defendant. There is no dispute that the plaintiff lent and advanced a sum of Rs.36,00,000/- to the defendant. The only question whether the defence as urged by the defendant is moonshine or sham or requires trial to adjudicate.
15. The first issue which the defendant has raised that the defendant has transferred the amount of Rs.36,00,000/- on the instructions of the plaintiff in the account of one M/s. Highreturn Agency Private Limited by way of three cheques on three occasions i.e on 18th March, 2016, Rs.15,00,000/-, Cheque No. 000164, on 22nd March, 2016, Rs.17,00,000/-, Cheque No. 000178 and on 29th March, 2016, Rs. 4,00,000/-, total amounting to Rs.36,00,000/-. The plaintiff has denied the contention of the defendant. The defendant has given the details of

cheque numbers and dates similar to the principal amount claimed by the plaintiff. Whether the plaintiff has given instruction to the defendant and the amount which the defendant deposited in the account of M/s. Highreturn Agency Private Limited is connected with the claimed amount of the plaintiff is required to be adjudicated during trial only.

- 16.** As regard to the account confirmation statement, the defendant has specifically stated that the said documents are forged and fabricated. The defendant has drawn the attention of this Court to the seal of the defendant company appearing on the account confirmation statement and on perusing the said seals, this Court finds that each seals are different from each other. Though the plaintiff has submitted that the defendant has not specifically pleaded the particulars of fraud but this Court is of the view that the said fact is to be decided only during trial.
- 17.** As regards to the maintainability of the suit, it is the case of the plaintiff that the as per the request of the defendant, the plaintiff lent and advanced a sum of Rs.36,00,000/- to the defendant and not the business transaction between the plaintiff and the defendant. The plaintiff has simply lent and advance the said amount to the defendant and thus it is not covered under Section 2(1)(c) of the Commercial Courts Act, 2015.
- 18.** The defendant has also taken the plea that the plaintiff has also initiated a criminal case against the defendant and by way of

supplementary affidavit, the defendant has brought the document on record to established that the directors of the defendants discharged from the said criminal case. The plaintiff has filed the present suit for recovery of money and the directors of the defendants have discharged from the criminal case on the pretext that the plaintiff company failed to appear before the Learned Magistrate on the date fixed, thus discharge of the directors from the criminal case does not affect the present suit.

19. Considering the above facts and circumstances, this Court finds that the issue raised by the defendant required to be decided during trial of the suit and thus no Judgment can be passed under Chapter XIII A of the Original Side Rules of this Court.
20. **G.A. No. 3 of 2021 is dismissed.**

(Krishna Rao, J.)