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**(2000) 02 DEL CK 0067**

**In the Delhi High Court**

**Case No : I.A. No. 10998/97 and S.No. 2128/97**

Ashok Leyland Finance Ltd.

APPELLANT

Vs

Mesco Pharmaceuticals Ltd.

RESPONDENT

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**Date of Decision : 23-02-2000**

**Acts Referred:**

**Citation : (2000) 85 DLT 683 : (2000) 4 RCR(Civil) 459**

**Hon'ble Judges : J.B. Goel, J**

**Bench : Single Bench**

**Advocate : Mr. M.S. Viniak and Ms. Anjali Sharma, for the Appellant; Mr. Anil K. Kher, for the Respondent**

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## **Judgement**

J.B. Goel, J.—This is an application filed by the defendant seeking leave to defend n a money suit filed by the plaintiff under summery procedure of Order xxxvII CPC.

2. The case of the plaintiff is that it is a non-banking financial company and on being approached by the defendant had agreed to give financial assistance by way of bill discounting facility to the defendant to the extent of Rs. 1.00 crore. On the terms as mutually agreed in writing dated 18.11.1995 inter alias agreeing at a discount rate of 26% per annum with additional finance charges of 6% per annum in case of delay and in pursuance of this agreement the plaintiff had discounted certain hundies dated 24.11.1995 for Rs. 99,62,975/-, dated 2nd March 1996 for Rs. 75,000/- and dated 29th June 1996 for Rs. 75,00,000/-. The defendant, however, was irregular in clearing their liability in time and gave three cheques No. 792166, 792167 and 792168 for Rs. 25,00,000/- each dated 15.1.1997, 15.2.1997 and 15.3.1997 in repayment of the cheque of Rs. 75.00 lakhs and had also agreed to pay discounting charges @ 30% per annum. These cheques have been dishonoured. plaintiff has claimed Rs. 1,04,48,630/- which includes discounting charges 29% per annum and additional finance charges @ 6% per annum.

3. On summons for judgment being served, the defendant has filed this application seeking leave to defend. It is not disputed that discounting facility was availed, cheques given remain unpaid, the liability to pay otherwise is also not disputed. However, it is alleged that:(1) the suit does not fall under the provisions of Order 37 Rules 1(2) CPC; (2) suit is pre-mature as the plaintiff had agreed to roll over the payments due to liquidity crunch of defendant; (3) postdated cheques were given on the understanding that before presentation of the cheques for payment, plaintiff would seek written confirmation from the defendant but the plaintiff has backed out of this agreement; (4) there is no cause of action and that the suit is not maintainable. It is denied that the defendant is liable to pay the discounting charges @ 29% per annum or additional finance charges @ 6% per annum or pendente lite or future interest 24% per annum as claimed.

4. plaintiff has denied these pleas and has pleaded that the application does not make out any case for grant of leave and no triable issue arises and hence defendant is not entitled to leave to defend.

5. I have heard learned counsel for the parties. Learned counsel for the defendant has contended that in view of the pleas raised in the application, triable issues arise entitling the defendant to unconditional leave. He has relied on Standard Chartered Bank Vs. M.S. Handa and Others, . Whereas learned counsel for the plaintiff has contended that in the facts and circumstances, no triable issue arises and no case for leave to defend is made out and plaintiff is entitled to decree.

6. I have considered the contentions and the material on record.

7. The case of plaintiff is that the defendant had approached it for bill discounting facility which was agreed on terms mutually agreed in writing dated 18.11.1995 at discounting rate of 28% p.a. besides over due additional charges 6% p.a. This is not disputed by the defendant.

8. plaintiff has also pleaded that they had initially discounted 3 Hundies for the defendant and lastly had discounted Hundi No. 225 dated 29.6.1996 for an amount of Rs. 75,00,000/- duly accepted by the defendant maturing 30 days after. However, the defendant did not make the payment against it on maturity but had offered to make the payments as under:-

1. Rs. 3,57,535/- on 28.7.1996. 2. Rs. 25.00 lakhs on 26.9.1996. 3. Rs. 25.00 lakhs on 31.10.1996. 4. Rs. 25.00 lakhs on 30.11.1996.

9. However, these payments were not made. Cheque No. 792106 dated 30.5.1996 of Rs. 75,00,000/- given by defendant was presented but was dishonoured. Then the defendant vide their letter dated 29.11.1996 had agreed to make the payments and handed over three cheques of Rs. 25.00 lakhs each as under :-

1. Cheque No. 792166 dated 15.1.1997. 2. Cheque No. 792167 dated

15.2.1997. 3. Cheque No. 792168 dated 15.3.1997.

and further agreeing to pay discounting charges @ 30% per annum. This is so admitted by the defendant in their letter dated November 29, 1996 to plaintiff, which reads as under :-

This refers to the discussion the undersigned had with you regarding repayment of Bill Discounting facility of Rs. 75 lakhs. As conveyed to you earlier, we are facing a temporary liquidity crunch on account of delay in realisations from our debtors.

We have finalised the recovery schedule with our debtors and, accordingly , propose to repay the aforesaid Bill Discounting facility as per the following schedule :-

|       |             |          |              |    |        |          |           |           |
|-------|-------------|----------|--------------|----|--------|----------|-----------|-----------|
| S.No. | Cheque Nos. | Date     | Amount (Rs.) | 1. | 792166 | 15/01/97 | 25,00,000 | 2.        |
|       | 792167      | 15/02/97 | 25,00,000    | 3. | 792168 | 15/03/97 | 25,00,000 | 75,00,000 |

Kindly note that the discounting charges on the above amount for the period July 29,1996 till the date of repayment shall be paid 30 % p.a. latest by December 15,1996.

We hereby confirm that the above schedule shall be met us without fail and no further delay shall be made in repayment of bill discounting facility and discounting charges.

10. The factum and correctness of this letter has not been denied or disputed by the defendant. The suit is based on agreement in writing and on dishonoured cheque(s). This is triable as a summary suit under Order xxxvII CPC.

11. It is also not the case of the defendant that they had made any written requests to the plaintiff not to present the cheques on due dates or that the plaintiff had agreed in writing to give any, further time for payment. Any arrangement to further postpone the payment if any, would be expected to be in writing like the letter of defendant dated 29.11.1996. Defendant has also not pleaded, if indulgence was given, by whom on behalf of the plaintiff and for how long. No promise would have agreed to postpone the payments indefinitely. The suit was filed on 3.10.1997, i.e., after waiting for more than 6-8 months after the dates of the cheques and when the validity period of these cheques is over. It is not the case of the defendant that they had given any other cheques in replacement of the three cheques after their expiry as had been issued earlier, if there was any arrangement for not presenting the cheques for any particular period. Course of conduct between the parties show that cheques were given in lieu of dishonoured cheques earlier when repayment was postponed.

12. In the facts and circumstances, the pleas taken by the defendant are not bona fide, do not give rise to any triable issue which may need investigation in trial. No case for grant of leave to defend thus is made out.

13. This application has no merit and is accordingly dismissed.

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14. Since the leave to defend has been refused, the plaintiff is entitled to a decree.

15. plaintiff has claimed Rs. 1,04,48,630/- which includes discounting charges 29% per annum besides additional finance charges @ 6% per annum. These are agreed by the defendant as noticed above. This being a commercial transaction between the parties, plaintiff is entitled to these charges as per agreement which in the absence of any material to the contrary cannot be said to be unreasonable or excessive. plaintiff is also entitled to pendente lite and future interest.

16. I accordingly pass a decree in favor of the plaintiff and against the defendant:

1. for recovery of Rs. 1,04,48,630/-;
2. Interest 18% per annum on the principal amount of Rs. 75,00,000/-
  - (a) from the date of institution of the suit till decree;
  - (b) from the date of decree till realisation; and
3. Costs of the suit.