**(2009) 03 GUJ CK 0068**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 12162 of 2002

Jashodaben alias Jayshreeben Rajesh Jesrani APPELLANT

Vs

Shital Marketing RESPONDENT

**Date of Decision :** 26-03-2009

**Acts Referred:**

Negotiable Instruments Act, 1881 (NI) — Section 139

**Citation :** (2009) 03 GUJ CK 0068

**Hon'ble Judges :** Mohit S. Shah, J

**Bench :** Single Bench

**Advocate :** BJ Trivedi and JT Trivedi, for the Appellant; BR Parikh and Rajkumar N. Vora, for the Respondent

## Judgement

Mohit S. Shah, J.—The original defendant of Summary Suit No. 5282 of 2001 has filed this writ petition challenging the order dated 25.10.2002 of the learned Chamber Judge, City Civil Court, Ahmedabad granting conditional leave to defend in Summary Suit No. 5282 of 2001.

2. By the said order, the learned Chamber Judge has imposed the condition that as against the sum of Rs. 3 lakhs claimed by the plaintiff in the suit, the defendant shall deposit 50% of the suit amount within six weeks.

3. While admitting the petition, this Court had granted interim stay against operation of the impugned order.

4. The respondent herein filed by the above-numbered summary suit in the year 2001 to recover a sum of Rs. 3 lakhs from the petitioner-defendant (hereinafter referred to as "the defendant") who had given two cheques to the plaintiff - (i) cheque dated 20.3.2001 for Rs. 1 lakh and, (ii) cheque dated 27.4.2001 for Rs. 2 lakhs. Upon presentation of the cheques with the plaintiff''s banker, the cheques were returned unpaid.

5. The defendant filed an affidavit seeking unconditional leave to defend after contending that there was an arrangement of "vishi" which is a sort of lucky draw

scheme. According to the defendant, the cheques were given towards security in the said lucky draw scheme. According to the defendant, the cheques were given by the plaintiff and deposited in a savings bank account, which was opened with the Ahmedabad Mercantile Cooperative Bank Ltd., Girdharnagar branch and the introduction for opening the said account was given by the plaintiff on 27.3.2001. According to the defendant, the two cheques for a total sum of Rs. 3 lakhs were deposited in the said account and thereafter withdrawn without the knowledge of the defendant by collusion between the plaintiff and the Manager of the Bank. The bank had given the cheque-book and passbook for the said account to the plaintiff without the knowledge of the defendant. Thus the amounts of Rs. 3 lakhs were never received by the defendant. The amounts deposited in the said account were withdrawn by the plaintiff by drawing cheques in favour of self and by forging the signature of the defendant. The defendant also contended that the defendant had filed a criminal complaint against the Manager of the bank.

6. After hearing the learned advocates for the parties, the learned Chamber Judge, City Civil Court granted conditional leave to defend imposing the condition to deposit 50% of the suit amount within six weeks. After the order was dictated by the learned Chamber Judge on 24.10.2002, the learned advocate for the defendant again gave an application for further arguments and after hearing the learned advocate for the defendant again, the learned Chamber Judge passed order dated 25.10.2002 stating that it was not necessary to make any change in the order passed on 24.10.2002.

7. Aggrieved by the above orders dated 24th and 25th October 2002, the original defendant has challenged the same in this Special Civil Application.

8. Mr JT Trivedi, learned Counsel for the petitioner has submitted that as held by the Hon''ble Supreme Court in State Bank of Saurashtra Vs. Ashit Shipping Services (P.) Ltd. and Another, the Court is required to grant unconditional leave to defend when a triable issue is raised by the defendant in the written statement/ affidavit for leave to defend. It is submitted that the defendant is a house-wife, whose husband is a salaried employee in a firm and no reason is shown by the plaintiff why the amount of Rs. 3 lakhs was advanced to the defendant.

9. Mr Parikh, learned advocate for the respondent-plaintiff has opposed the petition and pointed out that the defendant had filed a criminal complaint against the Manager of the Ahmedabad Mercantile Cooperative Bank Ltd. and had also filed a complaint against the same Bank Manager before the Ahmedabad City Consumer Dispute Redressal Forum. Both the proceedings have been dismissed by the respective Courts being the Court of Metropolitan Magistrate, Ahmedabad and the Ahmedabad City Consumer Dispute Redressal Forum.

Reliance is placed upon the judgment dated 30.6.2007 of the Ahmedabad City Consumer Dispute Redressal Forum dismissing the defendant''s complaint against the Manager of the Bank with costs quantified at Rs. 5,000/-. It is also pointed out that the judgment of the Consumer Forum makes a reference to the criminal complaint before the Court of Metropolitan Magistrate, Ahmedabad wherein the Investigating Officer prayed for ''B'' Summary. Mr Parikh has also pointed out from the document produced in the suit, which is a photostat copy of the account opening statement (Annexure-C in the paper-book -Page 49) which shows that the defendant''s account with Ahmedabad Mercantile Cooperative Bank Ltd., Girdharnagar branch was opened on 27.3.2001 upon introduction given by Dipak D Patel.

10. Thus the defendant''s case in the affidavit for leave to defend that her account was opened upon introduction given by the plaintiff is falsified on the face of the document. Similarly, the fact that Ahmedabad City Consumer Dispute Redressal Forum has also dismissed the defendant''s complaint against the Manager of the said Bank in respect of operation of the account in question, deposit of two cheques of Rs. 3 lakhs in the said account and withdrawal of the amount of Rs. 3 lakhs from the said account on 28.3.2001 are concerned, the allegations made by the defendant about fraud played by the Manager of the bank have been found to be without any basis. The fact that in the criminal case filed by the defendant against the Manager of the Bank in the Court of Metropolitan Magistrate, Ahmedabad the Investigating Officer has filed ''B'' Summary on 26.9.2001, also goes against the defendant.

11. When the plaintiff''s suit is based upon cheques drawn by the defendant in favour of the plaintiff, u/s 139 of the Act, 1881 a presumption is raised that the cheques were issued for consideration. The defendant has not shown any credible case which could reasonably rebut the strong presumption raised by the above statutory provision.

12. In view of the aforesaid facts and circumstances of the case, the order passed by the learned Chamber Judge imposing the condition requiring the defendant to deposit 50% of the suit amount cannot be said to be without jurisdiction, illegal or suffering from any error apparent on the face of the record.

The time-limit for depositing Rs. 1.50 lakhs i.e. 50% of the suit amount is extended upto 30th April 2009.

13. Subject to the above extension, the petition is dismissed. Rule is discharged. Interim relief granted earlier stands vacated.

 