

(1986) 09 BOM CK 0005

In the Bombay High Court

Case No : Summons for Judgment No. 407 of 1986 in Suit No. 1081 of 15S6
(Bom. Original Side)

Rajesh Steel Centre

APPELLANT

Vs

Smt. Rashmi K. Agarwal

RESPONDENT

Date of Decision : 05-09-1986

Acts Referred:

Citation : (1986) 88 BOMLR 697 : (1986) MhLj 993

Hon'ble Judges : N.K. Parekh, J

Bench : Single Bench

Judgement

N.K. Parekh, J.—The short question that has arisen on this Summons for Judgment is whether a suit against the legal heirs and representatives of the deceased, who are sought to be made liable only to the extent of the estate of the deceased in their hands, is maintainable as a summary suit.

2. Mr. A.G. Shah, the learned Counsel for the plaintiffs, has urged that the plaintiffs sold and delivered goods to the deceased and in respect whereof a bill of exchange was drawn. That the bill of exchange was accepted by the deceased, but he, failed to make payment under the same despite repeated demands. That the plaintiffs have hence filed a suit against the legal heirs and representatives of the deceased for the recovery of the plaintiffs' dues. That since the suit is on a bill of exchange, the suit would be maintainable as a summary suit. That the defence set out by the present defendants does not raise any substantial or triable issues and in view of this, the Summons for Judgment must be made absolute. In other words, a decree must follow.

3. Now as regards this contention, it may be stated that it is true that the suit is based on a bill of exchange, but in so far as the defendants in this suit are concerned, they are sued as the heirs and legal representatives of the deceased, and hence would not be personally liable. At best their liability would only be to the extent of the estate of the deceased in their hands and no more. If these legal heirs and representatives who have been made defendants are permitted to

defend, the whole or any part of the claim, and a direction is given to give security within a specified time, it may be that they may not be able to comply with the order because no liquid assets or for that matter any assets of the deceased may have come to their hands during the time prescribed for giving the security, in which case their defence would be shut out and a decree would follow. Such a situation must mean the very negation of the leave granted to defend to those who are not personally liable. The result against such defendants who are not personally liable, would be harsh, inequitable and unjust and such can never be the intention of the Legislature in enacting Order XXXVII of the Code of Civil Procedure.

4. In this view of the matter, I hold that a suit as a summary suit cannot lie against parties who are sued as legal heirs and representatives of the deceased and who are not personally liable. This suit will, therefore, be treated as a regular suit. Since the Writ of Summons has already been served, it is unnecessary to direct the plaintiffs to serve a fresh Writ of Summons. The transaction in question being of a commercial character, suffice it to direct that the suit should stand transferred to the list of Commercial Causes. The defendants to make and file their written statement within four weeks from today. There will be the usual order as to discovery and inspection. Suit expedited. The plaintiffs at liberty to move the learned Judge taking commercial causes in the third week of January 1987 to have the matter placed on board for fixing a date of hearing.