**AAPPLICATION UNDER ORDER 37 RULE 1, C. P. C. — SUIT FOR RECOVERY OF AMOUNT BASED ON A NEGOTIABLE INSTRUMENT**

(Under Order 37 Rule 1 C. P. C. )

IN THE COURT OF THE....................

Suit No..................... of 19....................

Under Order 37 Rule 1 C. P. C....................................

C. D................................................................... Plaintiff

versus

C. F................................................................ Defendant

The plaintiff abovenamed, states as follows:

1. That the defendant purchased clothes for the marriage of his son, on .................... from the shop of the plaintiff for Rs...................... details of which is given in the Schedule annexed hereto, and paid the consideration amount therefor through a Payee’s Account cheque N.................. dated, drawn on................... Bank.

2. That the plaintiff presented the cheque aforesaid to the Bank through his bank, and on.................... 19.................... the cheque has been returned un-honoured with the remarks "Refer to the drawer".

3. That in the City of.................... Order 37 of the Code of Civil Procedure has been made applicable and the amount aforesaid may be recovered through summary procedure under this provision.

4. That cause of action arose on.......... 19.......... when the cheque was dishonoured by the defendant’s Bank, and this Court has jurisdiction to decide the suit.

5. That the suit is valued at Rs..................... the amount aforesaid, and court-fee is paid thereon.

RELIEF CLAIMED:

The plaintiff claims payment of Rs..................... through summary procedure under Order 37 of the Code of Civil Procedure from the defendant, and interest on the amount from the date of suit till payment thereof.

It is accordingly prayed.

Plaintiff

Through Advocate

Place...................

Dated..................

**VERIFICATION**

I, abovenamed plaintiff, do hereby verify that the contents of paras .................... to.................... of the plaint are true to my personal knowledge and those of paras.................... and.................... thereof are based on legal advice which I believe to be true.

Verified on this................. day of.............. 19.................... at....................

Plaintiff

**case law**

***Order 37 Rule 3***

**PRINCIPLES FOR GRANTING LEAVE**

While giving leave to defend the suit the Court shall observe the following principles:

(a) If the Court is of opinion that the case raises a triable issue then leave to defend should ordinarily be granted unconditionally. The question whether the defence raises a triable issue or not has to be ascertained by the Court from the pleadings before it and the affidavits of parties.

(b) If the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to put by the defendant is frivolous or vexatious it may refuse leave to defend altogether.

(c) In cases where the Court entertains a genuine doubt on the question as to whether the defence is genuine or sham or whether it raises a triable issue or not, the Court may impose conditions in granting leave to defend. The Court would be justified in coming to the conclusion that the issue is not a triable issue when the defence is plausible but is improbable and in such cases it can put the defendant on terms while granting leave to defend.

(d) In cases where the defendant admits that a part of the amount claimed by the plaintiff is due from him the Court shall not grant leave to defend the suit unless the amount so admitted to be due is deposited by the defendant in Court.

(e) The Court while granting leave to defend must take care to see that the object of the Rule to assist the expeditious disposal of criminal cases to which the order applies is not defeated.

(f) The Court should further take care to see that real and genuine triable issues are not shot out by unduly severe orders as to deposit1.

1. Fateh Lal v. Sunder Lal, A. I. R. 1980 Raj. 220: 1980 W. L. N. 188.

The following principles, in respect of the grant of leave to defendant, on the basis of present provision of O. 37 of the Code, emerge:

(1) It is discretionary with the Court either to refuse or to grant leave to defend unconditionally or upon such terms as may appear to the Court to be just. But the aforesaid exercise of the discretion should be judicial and not arbitrary and whimsical.

(2) In case the defence intended to be put up if frivolous or vexatious, leave to defend must be refused.

(3) An unconditional leave to defend must be given if the facts disclosed by the defendant indicate that he has a substantial defence to raise, which means that defence so raised has good chance of success or has good potentiality to dislodge the plaintiff or which is bona fide and honest one and raises such question of law or of facts which require through judicial scrutiny.

(4) If the facts set up by the defendant do not disclose- a substantial defence, leave should normally be refused or else on account of mercy as provided for in the Supreme Court Judgment (A. I. R. 1977 S. C. 577) or due to a desire to exclude even remote chance of injustice to the defendant, leave to defend may be granted subject to the condition of deposit of amount claimed by the plaintiff or furnishing a security in respect of that amount or deposit of part of that amount and furnishing security for the payment of balance.

(5) Where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court2.

***EX-PARTE* DECREE WITHOUT FOLLOWING PROCEDURE NOT VALID.**

On the scheme of Rule 3 fulfilment of the two obligations by the defendant are intended to facilitate the plaintiff in applying for a summary judgment under sub-rule (4) but exercise of such right by the plaintiff is not entirely dependant thereon. Hence on the context and on the scheme of Rule 3 it cannot be said that the Legislature intended fulfilment of those obligations by the defendant to be a part of his act of appearance. Accordingly when a decree was passed without following sub-rules (4), (5) and (6) of Rule 3, it was held to be not valid3.

2. Har Prasad & Co. Ltd. v. Allahabad Bank, A. I. R. 1983 Delhi 280 (283).

3. Subir Kumar v. Mh. Habibur Riswas, A. I. R. 1980 Cal. 364.

**WHEN APPEARANCE BY DEFENDANT IS SUFFICIENT**

There is no particular form prescribed for entering appearance under Order 37, Rule 3. Where in a suit to which Order 37 applies the defendant filed an application purporting to be under Section 21 of the Code challenging the jurisdiction of the Court, but made no assertion in the application that to avoid ex-parte decree he is putting his appearance, the requirement of Order 37, Rule 3, as regarding entering of appearance by the defendant was complied with4.

**WHEN LEAVE TO DEFEND SHOULD BE GRANTED — ILLUSTRATION.**

Where the cheque was dishonoured as the owner did not have sufficient funds in the bank and that is why the endorsement on the memo by the Bank was "Referred to drawer". Nevertheless, the defence being put forth that the amount of the cheque was on account and the writing of July 15, 1978 proved that fact, may seem to illusory but the defendant in the circumstances ought to be enabled to prove it. Accordingly leave was granted to the defendant to appear and defend the suit on condition of furnishing a bank guarantee for Rs. 3000/- in the trial court within a month5.

**NON-MAINTAINABILITY OF APPLICATION FOR CONDONATION OF DELAY WITHOUT ENTERING APPEARANCE.**

Under Order 37, Rule 3 (7) if sufficient cause is shown for non-appearance or in applying for leave to defend the suit, the delay may be excused, but until the defendant enters appearance the court obviously cannot excuse any delay and no time can be given to them for appearance6.

**RECORDING REASONS FOR ORDER: NECESSITY.**

While making an order under this Rule, refusing leave to defend the suit or granting the leave subject to conditions the trial court should record the reasons for making the said order7.

***Order 37, Rule 2, Institution of Summary Suits***

**HIGH COURT’S EXPRESSING OPINION ON A QUESTION OF FACT EVEN BEFORE EVIDENCE WAS LED BY PARTIES IN THE SUIT — IMPROPRIETY OF — DEFENCE PREJUDICED THEREBY.**

***O. 37 R. 2 and 3, S. 115***

The Supreme Court has repeatedly laid down the well established principles

4. Haryana Brewaries Ltd. v. Aluminium Manufacturing Co. Ltd., A. I. R. 1980 Delhi 311.

5. Inderjit Sahdeo v. Ram Singh, A. I. R. 1980 Delhi 97: 1980 Rajdhani L. R. 410.

6. Haryana Brewaries Ltd. v. Aluminium Manufacturing Co. Ltd., A. I. R. 1980 Delhi 311.

7. Fateh Lal v. Sunder Lal, A. I. R. 1980 Raj. 220: 1980 W. L. N. 188.

which govern jurisdiction of the High Court under Section 115 C. P. C. These principles were ignored by the High Court in interfering with the discretionary order after a very detailed discussion of the facts of the case, differing on a pure question, of fact — whether the defences could be honest and *bonafide.* Any decision on such a question even before evidence has been led by the two sides, is generally hazardous. It is not fair to pronounce a categorical opinion on such a matter before the evidence of the parties is taken so that its effects could be examined. In the instant case, the defendant had denied, *inter alia,* liability to pay anything to the plaintiff for an alleged supply of goods. It is only in cases where the defence is patently dishonest or so unreasonable that it could not reasonably be expected to succeed that the exercise of discretion by the trial court to grant leave unconditionally may be questioned. There is no such ground of interference covered by Section 115 C. P. C.8

**SUMMARY SUIT UNDER ORDR 37, C. P. C. FOR RECOVERY OF AMOUNT**

The cheques were dishonoured in Delhi and more so the demand draft was made payable at Delhi. A part of cause of action having arisen at Delhi, the Delhi courts have the jurisdiction.9

In the present case, it is not clear whether the document is an indemnity or a guarantee. In any case there is no unconditional bank-guarantee. Hence leave to defend should have been granted in a summary trial suit under Order 37,
CPC 1908.10

8. M/s. Mechelec Engineers & Manufacturers v. M/s. Basic Equipment Corporation, (1976) 4 S.. C. C. 687: A. I. R. 1977 S. C. 577: (1977) 1 S. C. R. 1060: (1977) S. C. W. R. 287: 1976 U. J. (S. C. ) 953.

9. K. S. Wahi v. Ganga Exports, 2001 -(4) CCC 211 (Del. ).

10. State Bank of Saurashtra v. M/s. Ashit Shipping Services (P) Ltd., 2002 (2) CCC 131 (SC).