

[2022] 1 S.C.R.1024

B. L. KASHYAP AND SONS LTD.

v.

M/S JMS STEELS AND POWER CORPORATION & ANR.

(Civil Appeal No. 379 of 2022)

JANUARY 18, 2022

[VINEET SARAN AND DINESH MAHESHWARI, JJ.]

Code of Civil Procedure, 1908 – Order XXXVII – akaknaba matamgi manungda loisingadaba wayel-mifam (summary suit) – masabu ngakthoknabagi ayaba (leave to defend) – wakatliba mi (plaintiff) respondent No. 1 yot (iron) amasung ispat (steel) gi pot-thok sing saba amasung yonba gi thabak mioi khara pullaga touminnaba (partnership firm) ni - ingkhol, lam amasung yum-kei leiba-yonba gi sinfam (real estate firm) touba ngakthokliba mi defendant No. 1 asida (wakatliba mi gi) firm asina ton 200 gi ispat yonkhre – defendant No. 1 gi contractor oina thabak touriba defendant No. 2 na pot-chei leige hairakpadagi pot-cheising anirak pikhre. Adubu, pifam thokpa sel suna piraktabadagi wakatliba mi na defendant animakki mathakta summary suit asi thabani – Ahanba wayel-shang (Trial Court) na ngakthokliba mioi animakpu masabu ngakcha-kanjanabagi ayaba (leave to defend) pikhide – appellant-defendant No. 2 na ahanba Trial Court na tarakpa wayel adu shingnakhi – defendant No. 2 na masa ngakthoknabagi ayaba gi hak fangfam thokte haina High Court na lourammi maramdi mahakki masa ngakthoknabagi pukhatlakpa wafamda achumba machak yaode amasung wayelningai oiba achumba wafamsu yaode - High Court na makha tana asumna lourammi madudi (defendant na) sel yaodaba bank account ki (dishonoured cheque) pirakpa natrabadi summary suit thaba yade haiba leite amasung suit asi thaba yahalle – Appeal tourakpada taba wayel: Wakat warol (plaint averment) gi matung inna amasung defendant No. 1 na haiba matung inna amasung mahakki gi mahut sinduna appellant na pot-chei leinabagi ayiba cherol (purchase order) pikhiba aduda yumfam oiraga wafam asi thorakpani – Order XXXVII gi makhada summary suit chalainaba hairiba asi yafam thokte – High Court na pikhiba wayel aduda khut thingjinnaba (interference) maram amata leite – fibam ama thamnaraga oirabasu natraga thamnadanabu oirabasu (with or without condition) masa ngakthokchanabagi piba haibasi sadharon oiba niyamni amasung masa ngakthokchanabagi ayaba pidaba haibasina sadharon niyamgi wangmada onna teinana leibani (exception) ni – masa ngakthokchanabagi wayel toubinaba pukhatlakpa wafam asida, masa ngakthokchanabagi ayaba piba yade haiba yamna kanba maram leitrabadi defendant asida karigumba fibam amata thamdana (unconditionally) masa ngakthokchabagi ayaba pigadabani –appellant (defendant No. 2) na

masa ngakthoknabagi wafam pukhatlakpada karigi amasung karamna pukhatli amasung maduda achumba machak yaoi haibasi khannakhidre haibasidi chumle – Tasengbamakti appellant asina wayel chatthaba yaba machak sing maru oina mahakki pifam thokpasing (liability) gi matangda puthokkhi amasung appellant ki ngakthoknaba maram asi achumba machak sukyaomak yaodre haibadi yaroi. Ngakthoknabagi ayaba pibinaba thariba aduda appellant-defendant No. 2 na pifam thokpasinggi matangda palliba aduna maram oiduna mahakpu masa ngakthoknabagi ayaba piramgadabani.

Court na Appeal ayaba piba

Wayel:

1. Tourakliba wakat asigi waroisin purakpada maru oiba wafam anikhak khannafam thoki: ahanbada, asigumba case asida plaintiff na Order XXXVII gi makhada mahakki wayel asi akaknaba matamgi manungda wayel loisinba (summary suit) chalaihanbagi hak leibra; anisubada, appellant-defendant No. 2 bu masa ngakthokchanabagi ayaba pikhidaba adu maram chana pikhidabara haiba asini. [Para 13][1036-C-D]
2. Wakat warol adugi matung inna, yetnariba wafam asigi wahoudi defendant No. 1 gi yathang matung inna amasung mahakki mahut sinduna appellant asina pot-chei leinabagi ayiba cherol plaintiff ta pirubadagi amasung plaintiff asina leige hairakliba pot-cheising adu yonkhibagi invoice (pot leikhibagi mamal aamsung masing iba cherol) sing puthorakpadagini. Wayel asigi mapung oiba achumba wafamsing amasung fibam sing asigi mutung inna Order XXXVII gi makhada plaintiff na akaknaba matamgi manungda waroisin piba wayel chalainabagi hairakliba asi ayaba piroidabani amasung matang asida High Court na takhiba wayel aduda khut thingjinnaba maramsu leite. [Paras 14 and 14.2][1036-E;1037-B]
3. Masa ngakthokchabagi ayaba (fibam ama thammaga natraga thamdanabu oirabasu) piba haibasi sadharon oiba niti niyamni amasung ayaba adu pidaba haibasina sadharon niyam adugi mayokta/wangmada leiba niyamni. Masa ngakthokchanabagi ayaba pibiyu haina haijarakpada defendant aduna masa kanjanaba puthorakpa wafamsing aduda masa kanjaba yaba achumba machak amata yaodraba amasung wayel touningai oiba machak yaodraba matang khaktada ayaba piroidabani. Masa ngakthokchanabagi machak matik chana leirabadi defendant pu fibam amata thamdana (without any condition) masa ngakthoknabagi ayaba pigadabani. Defendant aduna manungda fattaba tounaba khallamba yai haina chingnaraba amasung mahakki ngakthoknaba machak tasengna leite haina khallaba faobada ngakthoknabagi ayabadi pigadabani toubatabu (pifam thokpadu) karamba matamda (pigani), wayelna karam chatthaba, sen pibagi mawong natraga thajanaba man-chang (security)

nachanachinga thambagi fibam sing thamgani. Asummaina, karigumbada defendant gi pukchel sheppagi mami taraba nattraga mahakki wayel chatthaningngai oide haina louraba faobada ngakthoknabagi ayaba pidaba haibasi niyam natte, chanaba fibam thambiraga ngakthoknabagi ayabadi pibigadabani. Defendant gi ngakthoknabagi machak suklei leitraba matangda nattarga wayel-shangna mahakki wafam asi wayel chatthaba yaba maram leite haibaga loinana wayel chatthaba yaroidaba matamda nattraga fibam animak asi oiraba matamdata defendant pu ngakthoknabagi ayaba piroi amasung plaintiff asibu wayel chatthaba yabagi hak fanghangani. Masa ngakthokchanabagi ayaba pibinaba darkhast ama tharakpa matamda ayaba pidaba haibasi niyamni nattraga ayaba piba haibasi akhannaba matang nattraga ngakthokpada mai paknaba machak leire khanglaba matam khaktada pigadabani haiba mityeng asida yenglaga thabak paikhatpa achumba thouwong natte. Ngakthoknabagi ayaba pibada yadabagi maram yamna chaona leiba nattrabadi ngakthokpagi ayaba pibinaba haijarakpa adu maram charabadi fibam amata thamdana ayaba pigadabani. [Paras 17, 17.2 and 17.3][1039-H; 1040-A-B, E-G; 1041-A-B]

4. Trial Court na defendant na masa ngakthokpa yaba machak amata puthokpa ngamdre haina loukhi. Appellant-defendant No. 2 na mahakti supnatagi defendant No. 1 gi contractor oina thabak toubani hairaduna mahakna masa ngakthochanaba mahakna mahakki singfam thokpa (liability) puthoktuna toukhibasing pumnamak Trial Court amasung High Court na yengsinduna khannakhidre haibasi lachan (record) singda mami tai. Wakat warolgi matung inna amasung plaintiff na haiba matung inna defendant No. 1 na yum sabagi machak leibagi selfam matam matamgi oina pirakkhi. Plaintiff tagi defendant No. 1 na pot leikhibabagi senfam machit machit pirakpa (part payment) cheque asidagi yetnaba asi thorakpani. Oirakliba fibam sing asida High Court na defendant gi ngakthoknaba machaksing yaode haina waroisin pikhibasi bhabna sajillaga pibani haina loughani amasung maram chaba watli. Defendant No. 1 na (mahakna leikhiba pot-cheigi) senfam plaintiff ta marak marakta piraki haina plaintiff masana haijariba asidagi thorkliba amasung masina pirakpa ithil (effect and impact) asidi defendant da ngakthokpagi ayaba pidaba matamda Trial Court amasung High Court anina khannabikhidaba malli. Defendant na mahakna pifam thokpa senfamsing ga mari leinana pukhatlakkhiba wafam adu wayel chatthaba yabani amasung mahakna pukhatlakkhiba adu wayelningai machak sukyao yaode haiba yaro. [Paras 18,19.1 and 20][1041-D-F; 1042-C-D, E]

Mechelec Engineers and Manufacturers v. Basic

Equipment Corporation AIR 1977 SC 577:[1977] 1

SCR 1060; *IDBI Trusteeship & Services Ltd. v. Hubtown*

Ltd.(2017) 1 SCC 568:[2016] 11 SCR 660 ; *Prem Nath Motors Limited v. Anurag Mittal* (2009) 16 SCC 274:[2008] 16 SCR 45 ; *V.K. Enterprises v. Shiva Steels* (2010) 9 SCC 256: [2010] 9 SCR 647- referred to.

Case Law Reference

[1977] 1 SCR 1060	referred to	Para 6.3
[2016] 11 SCR 660	referred to	Para 6.3
[2008] 16 SCR 45	referred to	Para 9.1
[2010] 9 SCR 647	referred to	Para 9.2

CIVIL APPELLATE JURISDICTION:

Civil Appeal No. 379 of 2022.

Delhi High Court na Delhi da tang 11.05.2018 da RFA No. 402 (2018) ga mari leinana famkhiba wayelda pikhiba wayel amasung yathang dagi louthokpa.

Appellant gi ukilsing: Jayant K. Mehta, Sr. Adv., Abhimanyu Mahajan, Apoorva Bhumes, Ms. Madhavi Khare, Ms. Anubha Goel.

Respondent singgi ukilsing: Sachin Dutta, Sr. Adv., Dr. Farrukh Khan, Ms. Ridhima Goyal, Abdul Aziz Chaus, Rameshwar Prasad Goyal, Lokesh Bhola, Manish Kumar Gupta, Karan Grover, Deepak Kumar Singh, A. Ushi Reddy, Pawan Kumar, Sudhir Kumar Ojha, Debopriyo Pal, Amit Kumar Bhati, Sriram P.

Wayel asi **DINESH MAHESHWARI, J.** na pikhibani.

Maru oiba wahoudok

1. Ayaba pire (leave granted).
2. Wakat asi houjik appellant oiriba asina thakhiba wakat amabu tang 11.05.2018 da Regular First Appeal No. 402 (2018) gi Delhi da famkhiba wayelda Delhi High Court na kakthatkhiba wayel-yathang amasung plaintiff- respondent No. 1 na tharakpa (tonkhiba) senfam singgat-hannabagi akaknaba matamda loisinba wayel mifam (summary suit) amagi tang 18.09.2017

da Additional District Judge – 05: West Tis Hazari Court, New Delhi na houjik appellant oiriba asibu defendant No. 2 oina amasung houjik respondent No. 2 asibuna defendant No. 1 haina pankhiba case CivDj/611333/2016 da pikhiba wayel-yathang adugi mayoktani.

2.1. Masidi hourakpada khangba ngammi madudi Trial Court na tang 18.09.2017 da defendant na masa ngakthokpa yaba machak puthokpa ngamdre amasung maram aduna masa ngakthokpagi ayaba pidre haiba wayel-yathang takhi. Tang 11.05.2018 da appellant-defendant No. 2 ga mari leinana takhiba shingnariba wayel yathang adubu High Court na chummi haina sougatkhi. Maram aduna houjikki wakat asida maru oina khannaningai oiriba wafamdi appellant asigi masa ngakthokchanaba ayaba pibiyu haijariba asini. Adum oinamak masimasu khangjinba chummi madudi atoppa defendant (mafam asidadi respondent No. 2 oiriba) asina tang 18.09.2017 da FRA No. 743 of 2018 wayelgi takhiba yathang adu shingnaraduna wakat ama thakhi amasung hairiba wakat adu High Court na tang 05.09.2018 da tonganba wayel ama famduna kakthatkhi. Tang 05.09.2018 da takhiba hairiba wayel asi eikhoigi wayel-shang asida shingnarakte adubu eikhoina masi luraba tanja asida mari leinaba thorakliba machak mayam asi puthoktuna yengsingani.

2.2. Khannabada mapung fanaba amasung wari paring chatthanabagi damak eikhoina nakan anibu (parties) suit asida makhoi makhoigi kari fibamda leiri haibadu puthoktuna yengsi.

Relevant factual and background aspects

3. Wayel asigi mari leinaba achumba machaksing (relevant factual) amasung marumda leiriba kaya adu makhagi asumna thamba yai:

3.1. Plaintiff-respondent No. 1 na Code of Civil Procedure (CPC), 1908 ki Order XXXVII makhada mahak makhal kayagi yot amasung ispat ki pothoksing saba amasung yonbagi thabakta mioi kharaga pullaga touminnaba registered partnership firm ni haina hairaduna khannariba suit asigi wakat-cherol thakhi. Plaintiff asigi warol matung inna, real estate firm amadi infrastructure development firm ni haina hairiba, mafam asidadi appellant oiriba, defendant No. 2 na mahak Plot No.1, Sector 143-B, Noida da MIST haina kouba project amagi yum-kei sabagi thabak (construction work) ta defendant No. 1 ga thabak touminnabani haina sak takkhi.

3.2. Plaintiff na hai madudi yum-kei sabagi thabak asiga mari leinana mahakna defendant No. 1 gi yum-kei sariba mafam aduda ispat ton 200 pikhre/thinkhre; appellant-defendant No. 2 na tang 06.02.2015 and 20.03.2015 da pot-chei singdu leinabagi irakpa cherol ani pirakkehibagi matung inna pikhibani. Plaintiff na makha tana hai madudi yonkhiba/leikhiba pot sing adugi senfam asi defendant No. 1 na pigadabani amasung masiga mari leinana wakat-cherolgi 7 suba paragraph ta yamna kupna piriba adugumna invoice (leikhiba pot-chei singgi mamal amasung masing iba cherol) singsu pikhrabani. Mahakna masimasu haikhi madudi leikhiba potlam sing adugi pikhiba invoice sing adugi manungda Rs. 89,50,244/- pirakkadaba watli.

3.3. Plaintiff na makha tana hai madudi invoice asing adugi pirakkadaba senfam adu defendant No. 1 asina Axis Bank (Sector-44 Noida Branch) ta leiba account amadagi cheque ani iduna pirakkhi. Cheque amana Rs. 14, 72,269 gini, Cheque No. na 037274 ni, tang 04.05.2015 da irakpani; atoppa cheque aduna tang 09.05.2015 da irakpani, cheque number na 037274 ni, irakpa senfamna Rs. 13,34,319/- ni. Adubu cheque sing adu kaithokpa yarani haibagi pao ama plaintiff ta piraktri faoba cheque sing adu kaithokpiganusu hairakkhi. Adubu kaithokpa yare haibagi paodi adum faorakkhidre. Matung tarakpada, Plaintiff sina tang 28.01.2016 da tolliba senfam adu pithoknaba wayelshanggi pao (legal notice) ama ngakthokliba mi singda thakhi amasung adubu pifam thaokpa senfam adu piraktabadagi Order XXXVII CPC gi makhada defendant singna punna singminnaraknaba haiduna subject suit asi thakhi. Plaintiff asina haikhiba mayamgi maraktagi panba yaba amadi touriba suit adu leiba-yonbagi yanaba ama ayiba pinakhiba amasung defendant No.1 na haibadagi mahakki mahut sinduna appellant-defendant No. 2 na pot liege haibagi ayiba cherol sing pirakkehibagi aduda yumfam oiraga thabani haibasini.

3.4. Aumna tharakpa summary suit aduda defendant No. 1 na maru oina mahakti plainfiff asiga tounariba yetnariba contract asida privity of contract ki niyam makhada konsilloi haikhi maramdi pot-chei liege haibagi ayiba cherol adu defendant No. 2 na pibani; plaintiff na pirakliba invoice sing adusu defendant No. 2 da irakpani; purchase order dasu invoice tasu defendant No. 1 gi khutyek (signature) yaode amasung leiba amasung yonbagi tounariba thabak pumnamak plaintiff amasung defendant No. 2 anigi marakta tounabani, masida defendant No.1 asina ain gi mityengda senfamdu piningai leite. Asumna yetnariba contract asida defendant No. 1 asi mari leinade haina yetkhi.

3.5. Defendant No. 1 na pukhatlakliba wafam sing adugi mayokta plaintiff na maru oina haikhi madudi defendant No. 1 na tharakliba darkhast asidi daitya pumnamak defendant No. 2 da thonggatlamlaga masa leithokkhinaba hotnabani. Mahakki wafam adu achumbani hairaduna plaintiff na mahakki hisab boi (ledger account) ama amasung defendant asina pithok-pisin toukhiba (transaction) senfamgi akuppa yaoba cherol (statement of account) puthoktuna defendant No. 2 da thinkhiba pot-chei adugi pirakkhiba senfam adu defendant No. 1 asina pirakkhiani haiba utkhi. Plaintiff asina asimasu haikhi madudi defendant No. 1 ga mahakka yanaba (agreement) leiramadrabadi defendant No. 1 plaintiff ki mingda cheque piraklammoi. Masimasu mahakna makha tana haikhi madudi invoice sing adu defendant No. 2 gi mamingda kakcharabasu cheque sing aduda “C/o MIST” haina iri. Masina plaintiff asina hairiba asi chummi haiba takle.

3.6. Appellant-defendant No. 2 na masa ngakthoknabagi ayaba pibinaba tonganba darkhast ama thakhi. Darkhast asina hairibadi appellant asi defendant No. 1 gi makhada civil contractor oina thabak touduna lakkhiani; pot-chei liebagi pirakkhiba cheque sing adusu supnadagi defendant No. 1 gi mahut sinduna pirakpa ngaktani amasung plaintiff na yum-kei sanabagi pot-chei sing thinkhiba mafam adusu defendant No. 1 na mapu oiduna paikhatliba construction project adugini. Appellant na contract adugi matung inna sari-khotliba sing adugi sanaba machak mathum pibasi mapugi haibadi defendant No. 1 gi toufam thokpa mathouni amasung leiruriba machak mathum sing adugi senfam (mamal) su mapuna pifam thokpani haikhi. Makha tana defendant No. 2 na defendant No.1 na haiba matung inna pikhiba purchase order sing amasung sen pithok-pisingi warol lachalle (haibadi record toure) amasung Bill sing adugi senfam sing matam chana lolina pithokpinaba haijakhre. Samna hairabada appellant asina plaintiff ta pigadaba senfam amata leite.

3.7. Plaintiff asina appellant na mahakpu masa ngakthoknabagi ayaba pibinaba haijarakliba adu yaningkhide amsung appellant-defendant No. 2 na masa ngakthoknaba maram chaba machak amata puthokpa ngamdre amasung mahakna wayel asigi wafam sing asi chamamnaba pokhannaba hotnare haikhi. Defendant No. 1 gi agent oina defendant No. 2 na pot-chei leinabagi pikhiba ayiba cherol adugi makha-ponna pot-chei sing adu pikhibani haikhi amasung defendant No. 2 da pikhiba pot-chei sing adugi senfamdi defendant No. 1 na piba haina nakan anina yanakhiani. Houjik khannariba suit asigi pot-chei pithok pisingi matangda appellant-defendant No. 2 chennaba maramna matangsida mahakki thoudang asi yamna maru oi.

Trial Court na defendant anibu masa ngakthokpagi ayaba pikhidaba

4. Tang 18.09. 2017 da takhiba houjik shingnariba wayel-yathang asida Trial Court na defendant anina punna masa masa ngakthokchanaba tharakhiba darkhast singbu khannakhi amasung defendant singna amana amada maral thangjinnaduna maral theidoknaba hotnabni hairaduna darkhast sing adu namhatkhi (reject toukhi).

4.1. Construction gi agreement gi matung inna defendant No. 2 asi defendant No. 1 gi makhada thabak subani; hairiba agreement asigi 10 suba clause gi matung inna defendant No. 2 na sinduna leirakhiba pot-chei sing adugi pifam thokpa sel adu defendant No. 1 na pigadabani. Trial Court na makha tana hai madudi pot-chei leinabagi plaintiff ta pirakhiba ayiba cherol adu defendant No.1 gi yathang matung inna defendant No. 2 na pirakpani amasung pot-chei sing adu construction company adugi asengba mapu oiriba defendant No. 1 gi yum-kei sabagi thabak paikhatliba mafam aduda yetnaba leitana thinkhre. Trial Court na masimasu haikhi madudi pot-chei sing pikhibagi Bill sing adu defendant No. 1 na piraktuna loisinnakhibani. Defendant No. 1 na mahakti privity of contract ki niyam matung inna yetnariba asida konsilloidabani haina yetkhiba adu yadre (reject toure) maramadi defendant No. 2 asina plaintiff asida pot-chei leibagi senfam sing piraga lakhibani; matam matamgi cheque amasung demand draft oina makhal kaya thokna pirakhiba kaya adu puthoknakhi. Trial Court na asumna haikhi madudi defendant No. 1 gi thabak sufamda yum-kei sanabagi pot-cheising plaintiff asina thinkhi amasung defendant No. 1 na madugidamk senfam pirakhi haibasi tasengana khangle. Maram asina defendant No. 1 na privity of contract ki niyam makhada mahakpu konsindanaba pukhatlakpa wafam asi Trial Court na maram chade amasung wayelningngi machak yaode haikhi. Chatthariba suit asi icham chamna defendant No. 1 na iba (issue toubu) cheque anikhakta yumfam oiraga paikhatpa natte; pot-chei leinabagi pirakhiba ayiba cherol amasung pot-chei yonkhibagi invoice sing dasu yumfam oiribani; leikhiba-yonkhiba potlam sing amasung pot-chei sing adugi mamal matha iba cherol sing asi (leiriba mi amasung yolliba mi anigi marakta) mapung fana yanaba (complete contract) amani haina Order XXXVII CPC na thamli hairaduna Trial Court na plaintiff na mangonda pikhiba cheque sing sen kaithokpagi wafam pankhidaba asina mahakna summary suit chalaihanba yaroidabani hairiba wafam asibu yadre (reject toure).

4.2. Defendant No. 1 na thanggatlakpa wafam yakhidraba matungda, Trial Court na appellant-defendant No.2 na masabu ngakthoknabagi ayaba pibiyu haijarakpa adusu mahakna defendant No. 1 gi agent oina (yum-kei sanabagi) potlamsing adu loukhibani hairaduna ayaba pikhide. Maram asina defendant animakna tolliba senfam adu singbagi daitya punna loufam thoki haikhi. Trial Court na haikhi, -

“15. Invoice sing adu defendant No. 1 gi thabak sufam mafamda pibani amasung pot-chei sing adu defendant No.2 na defendant No. 1 gi mahut sinduna loukhibani (receive toubani). Maram aduna plaintiff asina pikhiba pot-chei sing adugi senfam defendant animakna pifam thoki.”

5. Asumna defendant anina masa ngakthoknabagi ayaba pibiyu haijarakpa adu wayelningngai machak yaodabana makhoina tharakpa darkhast adu yadre (decline toure). Makha tarkpada wayel asi plaintiff asigi senfam Rs. 89,50, 244/- asi defendant anina chahida chada 10 gi changda sendoi haptuna tarakpa senfam adu singgadabani haiba yathang pikhi.

Appellant na tharakpa darkhast High Court na namhatpa

6. Appellant-defendant No. 2 na Trial Court ta ahanba thaba darkhast (regular first appeal) RFA No. 402 of 2018 aduda wayel-shangna tarakkhiba wayel-yathang adubu shingnakhi. Adum oinamak, High Court na appellant ki michangda hairakliba wafam adu yakhide amasung wakat adu namhatkhi.

6.1. Khannariba wafam mayam adugi marakta khwaidagi maru oina High Court na haikhi madudi pot-chei leibagi ayiba cherol adu defendant No. 2 na pibani haibasi hek yengbada tarang tarang urabana; pot-cheigi maming amasung mamal matha iba cherol adusu defendant No. 2 gi mamingda pibana amasung defendant No. 1 gi mingda piba nattabana; amasung invoice aduda defendant No. 2 gi mamingsu atamnana pallamba maramna leikhiba/yonkhiba pot-chei sing adu defendant No. 1 gi thabak mafamda thinkhibani hairagasu pot-chei leibagi pirakkhiba ayiba cherol adu defendant No. 1 gini haiba yaroi.

6.2. High Court na makha tana haikhi madudi appellant-defendant No.2 asi senfam singbada yaofam thoki (liable oi) amasung Order XXXVII CPC gi makhada suit asi chatthaba yai maramdi ayiba yannakhiba cherolda defendant No. 2 na plaintiff ta pifam thokpa senfam kayano haibadu invoice singda palli. Wayel asida puthoknariba cheque sing asigi matangda High Court na haikhi madudi cheque sing adu defendant No. 1 na soi touraga pibani, adu

oirabasu Order XXXVII CPC gi matung inna suit asi defendant No.2 gi mathakta toufam thoki maramdi cheque issue toubasi senfam adu pigadabani hairiba mioi adutana soi tougadabani haiba leite haina Order XXXVII CPC na hairi. High Court na makha tana haikhi madudi Indian Contract Act, 1872 gi section 2(d) gi matung inna contract amagi khannaba natamda contract tounariba nakan anikhaktagi mioi singgi marakta khannagadabani haiba leite. High Court na masimasu haikhi madudi cheque sing adu puthoklamdrabasu suit asi Order XXXVII CPC gi makhada chalaiba yai maramdi cheque ama dishonor toudriba makheidi summary suit ama thaba yaroi haibagi niyam leite. High Court na makha tana haikhi madudi defendant singna punna pifam thokpa sing piraktrabadi summary suit ama chalaiba yai haibasi makhada thamjari:-

“9. Appellant/defendant No. 2 amasung respondent No. 2/defendant No. 1 na punna senfam ama singfam thokpa (joint and several liabilities) leire haiba wafam asina, joint and several liabilities asi chalaibada, appellant/defendant No. 2 amasung respondent No. 2/defendant No. 1 gi mathakta subject suit asi thaba oithoklammoi haiba natte. Appellant/defendant No. 2 amasung respondent No. 2/defendant No. 1 anisina senfam adu punna singfam thoklabadi amasung mathakta haikhibagumna Indian Contract Act ki section 2 (d) na contract aduda yaoba nattaba mioi amabu senfam adu pibagi khannabada yaoba yabagi ayaba piri, maram aduna appellant/defendant No. 2 na leikhiba pot-cheiding adugi sel respondent No. 2/defendant No. 1 na pirage hairaga appellant/defendant No. 2 asi singbagi daitya komthokkadaba natte amasung respondent No. 2/defendant No. 1 khaktana sel adu singhoughani haiba leite.”

6.3. High Court na makha tana hai madudi khannariba wafam (issue) asida sijinnariba nitising (governing principles) asi, Trial Court na haikhibagum, *Mechelec Engineers and Manufacturers v. Basic Equipment Corporation*: AIR 1977 SC 577 ta loukhiba warep adu natte; adubu chatnaba yaba nitisingdi court asina konna *IDBI Trusteeship Services Ltd. v. Hubtown Ltd.*: (2017) 1 SCC 568 gi case ta loukhiba warepsingda yaori. High Court na nitising adu puthoktuna thamlaga hai madudi appellant/defendant No. 2 asi masa ngakthoknabagi ayaba fangba yaba mi oide maramdi mahakna masa ngakthoknabagi pukhatlakpa wafam adu tasengna wayelningai oiba wafam natte amasung pukhatlakliba wafam aduda achumba machaksu yaode. Mahakna thanggatlakliba wafamsing asidi plaintiff (haibadi pot-chei yolliba mi) ki pot-chei sing sotkhibagi tolliba senfam adu singdanaba toubani.

High Court nasu defendant No. 1 gi wakat (appeal) namhatpa (dismiss)

7. Makha chatthadringeida eikhoina khanghougada wafam amadi defendant No. 1 na Trial Court na tang 18.09.2017 da takhiba wayel-yathang adubu shingnaraduna appeal ama (FRA No. 743 of 2018) thakhi. Mafam asidadi respondent No. 2 haina khangnariba defendant No. 1 na thakhiba wakat adu High Court na khannakhi amasung konna masigi oiba tonganba wayel warep ama tang 05.09. 2018 da loukhi. Hairiba warep aduna defendant No. 1 na masa ngakthoknabagi ayaba pibiyu haijariba asida achumba machak yaode haikhi. Piriba wayel adu maram chabani haina High Court na asumna hairi:-

“Defendant No. 1 na masa ngakthoknaba pukhatlakpa wafamda achumba machak yaode amasung tasengba wayelningai oiba wafam yaode maramdi karigumba defendant No. 1 asina (senfam adu) pifam thoklamdrabadi mahakna senfam adu chang naina plaintiff ta pirakkkhiba adu piraklammoi.”

Yetlakliba Wafamsing (Rival Contentions)

8. Appellant/defendant No.2 gi wafamda amuk laklaga mahakki mayokta leibasingna wakat adugi matangda hairibasing asi eikhoina samna khangjinba yai.
9. Appellant-defendant No. 2 gi learned counsel na hai madudi plaintiff na yollakkkhiba pot-chei sing adugi pifam thokpa senfam adu defendant No. 1 na pifam thokpani haina plaintiff asimakna haikhiba asina senfam adu appellant/defendant No. 2 na singfam thokte, defendant No. 1 na singfam thoki haibasi khudam changdam oijarabani. Asumna learned counsel asigi matung inna yetnariba wayel-yathang asi plaintiff na pamliba adugi onna teinabada chatkhre amasung wayel-yathang asi chatnaba yaroi.

9.1. Appellant ki lerned counsel na makha tana hai madudi plaintiff asiga defendant No. 1 ga ispat leibagi yanakhiba aduda appellant asi defendant No.1 gi mahut sinduna agent oina thabak toubani, defendant No. 1 gi mahut sinduna ispat leibagi ayiba cherol adu pikhi haibagidamak appellant asibu plaintiff ki senfam adu singgadabani haiba yaroi, contract amada mapugi mahut silliba agent amabu singbagi daitya piroidabani haiba wafam asi Indian Contract Act, 1872 gi section 230 da yaori. Learned counsel na Prem Nath Motors Limited v. Anurag Mittal : (2009) 16 SCC 274 gi wayel-yathang adu ningsingkhii. Learned counsel na makha tana hai madudi defendant No. 1 na plaintiff tagi pot-chei leikhibagi machit machit oina cheque ani (No. 037274 amasung No. 037272) asi plaintiff ta pirakkkhre; amasung High Court na cheque haibasidi CPC gi Order XXXVII Rule 1(2) gi matung inna contract amagi

piragani haina nakan anina yanaba senfamni haina hairaduna cheque sing adu defendant No. 1 na pigadabani amasung appellant asina pifam thokte haikhi.

9.2. Learned counsel na makha tana hai madudi plaintiff asina Order XXXVII gi makhada summary suit ama appellant gi mathakta thariba asi senfam adu mangondagi namduna khomgatnabagi ain gi ayaba leitabana chalaiba yaroi amasung wafam asi chummi haiba khangnaba V. K. Enterprises v. Shiva Steels (2009) 9 SCC 256 ki case ta pikhiba wayel asida thajaba tai.

10. Appellant ki learned counsel na hairiba adugi onna teinabada, houjik tharakliba appeal asi ain gi makhada singfam thoklaba senfam adu singdanaba hotnabani hairaduna appeal adu dismiss toufam thoki haina plaintiff-respondent No. 1 gi learned counsel na haikhi.

10.1. Learned counsel na appellant-defendant No. 2 amasung defendant No. 1 ani asina touribasidi amana amada maral thangjinnaduna leiraga tolliba senfam adu singdanaba hotnabani haikhi. Appellant-defendant No. 2 gi singfam thokpagi matangda learned counsel na hai madudi appellant asina pot-chei sing leinabagi ayiba cherol pirakkhi; hairiba ayiba cherol adugi matung inna pot-chei sing pikhi amasung invoice singsu appellant asigi mingda pikhi amasung pot-chei sing adusu appellant asina loukhibani (receive toukhibani). Taseng tasengna khanglaba fibam asi leirabada appellant asina pot-chei sing adu defendant No. 1 gi thabak mafamda thinkhibani haiduna mahakna singfam thokpa senfam adu singdaba yaroi. Hairiba sing asina maram oiduna defendant animakna punna tolliba senfam adu singfam thoki.

10.2. Learned counsel na hai madudi invoice sing adugi apunba senfam (total amount) aduna nakan anina innakhiba yana-cherol (written contract) adu oiribani, maram aduna Order XXXVII gi makhada thariba suit asi maram chai amasung defendant anina amana amada maral thangjinnaraga makhoigi pifam thokpa adudagi nanthoktuna chatpa yaroi.

11. Mathakki asida atoppa mityeng amadagi, defendant No. 1 (mafam asidadi respondent No. 2 oiriba) gi michangda lepliba learned counsel na hai madudi defendant No. 2 amasung defendant No. 1 anigi marakta yanakhiba construction gi matung inna plaintiff na pirakkhiba (supply) pot-chei sing adugi pifam thokpa senfam defendant No. 2 na pigadabani. Learned counsel na hai madudi pot-chei leibagi ayiba cherol adu appellant-defendant No. 2 na pirakpani, pot-chei leikhibagi invoice adusu defendant No. 2 gi mingda pikhibani, maram asina plaintiff amasung defendant No. 1 gi marakta ain gi mityengda pithok-pisin tounabagi

maram (privity of contract) amata leite. Defendant No. 2 di icham chamna defendant No. 1 gi thabak toubani amasung pot-chei leibagi thillakkhiba adu defendant No. 1 gi thabak madamda thillakkhi hairaga senfam adu defendant No. 1 na hekta pifam thokte. Contract asida defendant No. 1 gi thoudang amata yaode maramdi pot-chei leiba yonbagi yana-cherol innabadasu mahakki ayaba yaokhide amasung leikhiba ispat sing adugi mamal ngangnabadasu mahak yaona khannakhide, pot-chei leibagi pikhiba ayiba cherol adudasu amasung invoice adudasu mahakki (defendant No.1 gi) maming natraga khutyek yaokhide. Defendant No. 1 na hanna pikhiba senfam sing adudi defendant No. 2 na sijinnanaba sel leitre amasung plaintiff ki yaona dukan singda pinaba sel piyu haibadagi pikhibani.

11.1. Defendant No. 1 gi damak mahakna thakiba appeal (RFA No. 743 of 2018) adugi wayelda leiriba mari leinaba achumba wafamsing (relevant facts) sing aduda pukning thingjindana tang 05.09.2018 da High Court na appeal adu namhatkhiba (dismiss toukhiba) adusu puthoktuna khannakhi. Appellant amasung defendant No. 1 anigi maraktasu yanadaba kaya leibana Delhi High Court ta makhoi anigi wayel panduna leiri haibasus puthoknakhi.

12. Yetnariba singna hairakpa pumnamak ningthina tare amasung pisinnarakpa lachan/chejan (records) sing asi ain gi makhada chatnaba yabasing adu yamna kupna yengsinle.

Analysis

13. Mamangda neinakhrabasing adugi matung inna appeal asigi waroisin purakpada maru oiba wafam anikhak thorakli madudi ahanbada plaintiff na mahakki senfam adu fangnaba Order XXXVII CPC asi chalaibanbagi hak leibra haibasini; amasung anisuba wafamna appellant-defendant No. 2 asina masa ngakthoknabagi ayaba piyu haina darkhast tharkpa matam aduda mangonda ayaba pikhidaba adu niyam chumna toukhibara haibasini.
14. Order XXXVII CPC gi makhada summary suit asi chalaiba yabara haiba wafam asida eikhoina panthaduna leiroidabani. Maramdi wakat cherol gi matung inna khannariba wafam asi defendant No. 1 gi yathang matung inna amasung mahakki agent oina defendant No. 2 na pot-chei leinabagi ayiba cherol pirubadagi thorakpani, amasung plaintiff na yonkhiba pot-chei sing adugi invoice puthorakpadagini. Plaintiff na makha tana hai madudi pot-chei sing adu leikhibagi mangonda machit machit pirakhiba cheque sing (amana tang 04.05.2015 da iba cheque No. 037274 gi Rs.14,72, 269/- amasung anisubana tang 09.05.2015 da iba cheque No. 037272 gi Rs. 13,34, 319/-) asi defendant No. 1 na pirakkhiani.

14.1. Plaintiff na defendant animakpu senfam adu pifam thoki hairi. Appellant na pot-chei leibagi wafam aduda mahakti defendant No. 1 gi agent oina thabak toubani amasung senfam adu mahakna pifam thokte haina hairiba asi mahakkidi ngakthoknaba machakni. Appellant asigi ngakthoknabagi mawong asidi yengsinfam thoki adubu masimakna plaintiff-respondent No. 1 gi Order XXXVII CPC gi makhada summary suit chalainabagi hakti manghalloidabani. Defendant animakna senfam adu punna singbagi daitya loufam thoki hairagasu, wafam amana defendant No. 1 na ibani hairiba cheque sing asida plaintiff na thajaba thammi amasung hairiba cheque adu defendant No. 1 na haijarakpa matung inna puthokpadi natte.

14.2. Wayel asigi leiriba achumba wafamsing (facts) amasung fibam (circumstances) sing asida Order XXXVII CPC gi makhada summary suit chalaiba yabra haibasigi matangda yetliba asi yaba ngamloi amasung madugidamak High Court na takhiba wayel aduda khut thingjinningai leite. Adum oinamak leiriba wahangdi appellant asina masa ngakthoknabagi ayaba fangfam thokpara haibasini.

15. Masa ngakthoknabagi ayaba piba haibasigi matangda hanna haikhibagumna High Court na appellant asibu mahakna pukhatkhiba masa ngakthoknabagi wafam adu wayelningai oiba machak yaode haiduna masa ngakthoknabagi ayaba pifam thokte haikhrabani. Puthorakkhiba masa ngakthoknabagi wafam sing aduda achumba machak yaode amasung mahakna pukhatkhiba adu plaintiff (pot yolliba mi) asigi sen adu singdanaba khaki appeal toubani haibasisu High Court na haikhrabani. High Court ki matung inna IDBI Trustiship (supra) gi wayelda masa ngakthoknabagi ayaba pinabagi niti niyamsing yamna mayek sengna thamkhibagumna appellant asi masa ngakthoknabagi ayaba fangningai leite.

16. Trial Court na Mechelec Engineers (supra) gi wayelda thajaba thamkhibadu High Court na madugi achumba machak sing adu khangjinkhi amasung chatnaba yaba niti singdi Court asina IDBI (supra) gi konna pikhiba aroiba wayelda yaoduna leirabani haikhi. Houjik mangda tariba wafam asigidamak, mathakki wayel-yathang anisida yaoriba nitising adu punna khangminnabana fagani.

16.1. Mechelec Engineers (supra) gi wayelda hairibana summary suit ta masa ngakthoknabagi ayaba pibinaba tharakpa khannaba yaba niti niyamsing court asina makhagi asumna piri:-

“8. Kiranmoyee Dassi Smt v. Dr. J. Chaterjee [AIR 1949Cal 479: CWN 246, 253: ILR (1945) 2 Cal 145.] gi wayelda Das, J., na heeramsida authority oiraba niti niyam kayabu pak sanna neinaraba matungda, Order 17 CPC na konsinba case singda chatnaba yaba niti niyam singdi makhagi wayel warolda asumna hairi:

“(a) Karigumba defendant aduna mahak masa ngakthoknabagi machak ningthina puthoktuna court pu thajahallaba/pelhallaba adu oirabadi plaintiff adu wayel chatthanabagi ayaba fangfam thokte amasung defendant aduna fibam amata yaodana masa ngakthoknabagi ayaba fangbagi hak fanggani.

“(b) Defendant aduna pukchel sengna, namthak yaodana achumbasing amasung maram chaba wayelningai oiba machak sing puthoklabadi, ngakthoknabagi maram sing adu chap chabamak natrabasu, palintiff aduna wayel chatthanaba ayaba fangloi amasung defendant aduna fibam amata yaodana masa ngakthoknabagi ayaba fangbagi hak fanggani.

“(c) Karigumba defendant aduna mahakpu masa ngakthoknabagi hak piba yaba achumba wafam sing haidoklabadi haibadi mahakki affidavit aduda mahakki ngakthoknabagi machak pura yaodrabasu amasung khudakta mayek sengna puthokpa ngamdrabasu plaintiff na tharakliba adugi mayokta achumba kharadi puthorakpa yabagi fibam ama laklabadi plaintiff adu wayel chatthanabagi ayaba piroi amasung defendant adubu masa ngakthoknabagi ayaba pigani; adubu asigmba tanjadadi wayel-shangna na fani khanba fibam khara thamba yai. Khudam oina singbagi matam, wayel chatthabagi mawong (wayel-shangda sel pibadi nattaba natraga security puthokhanba nattaba).

“(d) Defendant adugi ngakthokanabagi machak leitraba amasung masa ngakthoknaba puthorakpa wafam sing adu bhabna sajinba, tousinnaba natraga natei chadaba oiramlabadi plaintiff adu wayel chatthaba yahangani amasung defendant adubuna masa ngakthoknabagi ayaba piroi.

“(e) Defendant adugi ngakthokanabagi machak leitraba amasung masa ngakthoknaba puthorakpa wafam sing adu bhabna sajinba, tousinnaba natraga natei chadaba oiramlaba, plaintiff adu wayel chatthaba yahallabasu wayel-shangna plaintiff adu ngakpi-kanbiba (protect) oina ngakthokpigi wayel chatthahanba yai karigumba pinagadaba senfam adu wayel-shangda puraktuna pinnaraba natraga fangnaraba amasung asigumba fibamda

defendant adubusu minungshi utpiduna ayaba pibiraga mahak masa ngakthokpa ngambagi tanja ama pibigadabani.”

16.2. IDBI (supra) gi wayelda wayel-shang asina mamangda pankhiba niti sing (principles) adu semdokkhi amasung makhada pijari:

“17. Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687] ta 8 suba para da hairiba niti singgi mahut Order 37 Rule 3 gi amendment amasung Milkhiram case [Milkhiram (India) (P) Ltd. V. Chamanlal Bros., AIR 1965 SC 1698: (1966)68 Bom LR 36] ta wayel-mapu marina punna pikhiba aroiba wayelda haikhibagumna makhagi asumna sindokle:

17.1. Defendant amana mahakki masa ngakthoknabagi maramsing matik chana lei haibadi mahakki ngakthokpa adu mai pakpa yabagi fibamda leire haibadu wayel-shangda puthoktuna utlaga wayel-shangbu thajahallabadi/pelhallabadi plaintiff aduna wayel chatthabagi ayaba fangloi amasung defendant adubu masa ngakthoknabagi ayaba adu fabam amata thamdana fanghangani.

17.2. Defendant aduna thamoisengna natraga ngakthoknabagi maram chana wayel chatthaba yaba maram sing puthoraklabadi, ngakthoknabagi machak adu mapung pura fadrabasu, plaintiff adu wayel chatthaba yabagi hak fanghanlloi amasung defendant adu fibam amata thamdana masa ngakthoknabagi ayaba piba masana tabani.

17.3. Defendant na pukhatlakliba masa ngakthoknabagi wafam adu wayelningai oiba machak yaorabasu, defendant adugi pukchel seppa natraga wayelningai oiba machak aduda chingnaba leirabadi, vicharpatina (sel singbagi) matam natraga wayel chatthabagi mawong amadi wayel-shangda senfam pinaba natraga security puthokhanba asinachingba kayagi fibam thamba yai. Masi tounaba hotnabada lalon-itikki mari leinaba wayelsingbu yamna yangna amasung heisingna loisinnaba leiriba provision gi pandam singbu manghandanaba yamna cheksingadabani. Asigumba wayel chatthaba yaba machaksingbu yamna kanba yathang khudam oina deposit touhanba natraga security puthokhanba touduna athingba pidanaba yamna cheksingadabani.

17.4. Karigumba defendant aduna masa ngakthoknabagi puthorakpa wafam adu achumba machak yaori haina lourabasu maduda chingnaba leirabadi vicharpati na (sel singbagi) matam

nattraga wayel chatthabagi mawong amadi wayel-shangda senfam pinaba nattraga security puthokhanba asinachingba kayagi fibam thamba yai. Masa ngakthoknabagi pukhatlakpa wafamda wayelningai machak yaodrabadi deposit touhanaba nattraga security puthokhanba nattraga animak touhanba amasung apunba senfam adugi sendoi yaona pihanbanachingba kaya wayel-shangna fei khanbadu touba yai.

17.5. Defendant gi masa ngakthoknabagi matik chaba machak leitraba amasung wayel chatthaba yaba machak sing puthokpa ngamdrabadi amasung ngakthoknaba machak adu achumba machak yaode haina wayel-shangna lourabadi masa ngakthoknaba ayaba pibinaba tharakpa darkhast adu yadaba (refuse) yai amasung plaintiff bu summary suit ki wayel chatthahanba yabagi hak pigani.

17.6. Plaintiff na defendant ta tolle hairiba senfam adugi saruk kharada oirabasu tolle haina defendant masana yajarabadi mahakna masa ngakthoknabagi ayaba pibinaba thariba aduda achumba machak yaorabasu nattraga wayelningai machak yaorabasu mahakna tolliba senfam adu wayel-shangda puraktuna pidriba faoba mahakki masa ngakthoknabagi ayaba piyu hairibadu ayaba piroi.”

17. Masimadi khudakta mayek sengna khangle madudi, IDBI Trusteeship ki wayelda toubagumna, wayel-shang asina Order XXXVII gi Rule 3 semdokkhibana maram oiduna Mecheleck Engineers ki wayel gi 8 suba para da hairiba niti sing adugi mahut sindokle haina haikhi, adubu hannagi niti amasung anouba niti anidu munna manung hanjinna yengsillabadi khennaba leite, manei haibadi animakna hairibasi fibam thamduna nattraga fibam thamdana masa ngakthoknabgi ayaba piba haibasi sadharon ain ni amasung ayaba adu pidaba haibasina sadharon ain gi wangmada leiba onna teinaba (exception) ain ni. Atoppa waheida hairaga, ayamba matamda masa ngakthoknabagi ayaba pibinaba haijarakpada defendant aduna wayel-shangda masa ngakthoknabagi achumba machak yaoba wafam puthokpa ngamdraba amasung wayelningai machak yaodraba matamda mahakpu ayaba piroidabani.

17.1 Mamangda khangkhrabagumna, karigumba defendant amana mahakki masa ngakthoknaba gidamak mai pakpa yaba achumba machak ningthina leirabadi defendant adu masa ngakthoknabagi ayaba fibam amata thamdana pigadabani. Anisubadana, defendant aduna thamoi sengna nattraga chumna nattraga maram chana ngakthoknabagi wafam puthoraklabadi, ngakthoknabagi pambei adu pura mapung fadrabasu, defendant pu masa ngakthoknabagi ayaba piba haibasi toufam thokpa niyamni. Ahumsubada, defendant aduna

wayelningai oiba machak puthoraklabasu madu chingnaningngai oirabadi commercial cause adu heisingna thuna loisinba amasung wayelningai machak yaoba case pu kahenna akanba yathang piduna athingba pibaga anisigi marakta karambana fagani haibadu Trial Court na leppa mathou tai. Maram aduna Trial Court na fibam sing haibadi matam, wayel chatthabagi mawong amadi wayel-shangda sel pinabagi mawong amasung security puthokpa na chingba thamba yai. Marisubada, ngakthoknabagi maramsing adu achumbadi yaoramgani hairagasu thajabadi waba matangda ahenba fibam (heightened condition) haibadi (singbagi) matam thanaba, wayelgi mawong amadi wayel-shangda sel pibagi natraga security puthokhanbagi natraga animak touhanbaga lina apunba senfam adu pifam thokpa sendoiga lina pihanbagi fibam faoba thamba yai.

17.2. Asumna ngakthoknabagi machak ningthina leirabadi defendant adu fibam amata thamdana masa ngakthoknabagi ayaba pigadabani haibasi khangba ngamle; amasung wayelningai oiba machakpu yaorabadi defendant pu masa ngakthoknabagi ayaba piba haibasi toufam thokpani. Karigumba defendant ki wakhal seppabgi chingnaba leiraba amasung wayelningai oiba machak aduda chingnaba leiraba faobada defendant adubu sel singbagi matam thanaba, wayel chatthabagi mawong amadi sel pibagi mawong natraga security puthokhanbagi fibam kaya thamlaga masa ngakthoknabagi ayaba adudi pigadabani. Asumna chingnaba yaba wafam laklabasu, defendant pu masa ngakthoknabagi ayaba pidaba haibasi sadharon ain natte, adubu masa ngakthoknabagi ayaba piba matamda chunaba fabamsing thambigadabani. Asumna defendant amabu masa ngakthoknabagi machak ningthina leitrabada amasung/natraga wayelningai machak leitrabada amadi wayel-shanggi mityengda mahakki machak adu achumba yaodaba wafam ngaktani haina louraba matam adu khaktada defendant pu masa ngakthoknabagi ayaba piroi amasung plaintiff pu wayel chatthaba yabagi hak pigani. Thangngei-sengbamak, karigumba plaintiff asina tolli hairiba senfam adugi saruk kharada oirabasu tolli haibasi defendant masana yajarabadi hairiba senfam adu wayel-shangda defendant asina thamdrifaoba mahakpu masa ngakthoknabagi ayaba piroidabani.

17.3. Maram aduna masa ngakthonabagi ayaba pibiyu haijarakpagi wafam khannaba matamda ayaba pidaba haibasi niyamni (rule ni) natraga ayaba haibasi akhannaba case khara khaktada pigadabani natraga ngakthoknabagi machak sing adu mai paklani hairaba tanja khaktada ayaba pigadabani haibasi achumba khongthang oiroi. Ayaba piba yaroi haiba akanba maram leitrabadi, defendant na wayelningai oiba wafam thamoi sengna amasung maram chana puthoklabadi defendant pu fibam amata thamdana ayaba pigadabani. Masi amukkasu hanna haiba mathou tai madudi puthorakliba ngakthoknabagi machak sing adu

chingnaba leiraba faobada, hanna mamangda haikhibagum, hena kanba/lumba fibam thamduna ayaba pibiba yai, adubu defendant na masa ngakthoknabagi wayelningai oiba machak puthokpa ngamdraba matamda amasung wayel-shangna machak sing adu achumba yaodre haina louraba matamda ayaba pidaba tabani.

18. Houjik chatthariba wayel asigi oiriba fibamsing asigi asengba machaksing amasung shingnarakliba wayel-yathang asida mamangda pankhiba nitising (principles) sing adu pansinduna yengbada masimadi tasengna khangba ngammi madudi plaintiff asina Order XXXVII CPC gi makhada summary suit chalaiba yai maramdi defendant animakna punna singfam thoki hairibana, High Court na defendant singgi wafam adu achumba machak yaode haina waroi pikhibani. Trial Court na defendant anina wayel chatthaba yaba machak sing puthokpa ngamdre haina haikhi. Asigumba waroisin ama purakpa matamda Trial Court nasu High Court nasu appellant-defendant No. 2 na mahakti chumnadagi defendant No. 1 gi agent oina thabak toubani haikhaba adudi yengsinba kaoramba malli. Wakat warolda hairiba amasung plaintiff na haiba matung inna defendant No. 1 na yum-kei sabagi machak leibagi marak marakta senfam kaya thokna piraki hairi. Plaintiff asina pot-chei yonkhibagi senfam adugi damak plaintiff ta machit machit pirakhiba senfam adugi cheque sing adu defendant No. 1 na ibani. Asigumba fibam mayam leirabanina, defendant sing na pukhatlakpa wafam sing adu maram chaba machak yaode haiduna High Court na pikhiba wayel adu achumba yaodaba amadi bhabna sajinbani haina loughani.
19. Asigumba luraba tanja asida, wayel asigi panba yaba yamna maru oiba wafam amana defendant No 1 (mafam asidadi respondent No. 2 oiba) na Trial Court na tang 18.09. 2017 da pikhiba wayel-yathang adu shingnakhi, mahakki wakat (FRA No. 743 of 2018) adu High Court nasu tonganna khannakhi amasung tang 05.09. 2018 da takhiba wayelna namhatkhi (dismiss toukhi). Khangningliba wafamdi High Court na defendant No. 1 na puthorakpa ngakthoknaba machak sing achumaba machak yaode haiduna appeal adu namhatkhiba amasung makhoina fangkhiba machak (findings) adubu sougatpa oina High Court na maru oina defendant No. 1 na plaintiff asida chang naina matam matam gi cheque piraktuna leirabamaktada defendant No. 1 gi pifam thokpa (liability) leibra haina wahang oina hanglaga loisinkhibasini.

19.1. Masi hek yengbada khangba ngammi madudi defendant No. 1 na haiba matung inna tang 05.09. 2018 da takhiba wayel-warep adugi onna teinabada, appellant (defendant No. 2) na puthorakpa masa ngakthoknabagi wafam adu achumba machak yaode amasung plaintiff

(pot yonliba mi) asigi tolliba senfam adu hatnaba/ singdanaba toubani haina tang 11.05.2018 da takhiba shingnarakliba wayel-yathang adu High Court na munna khandadana irai laina (merely observed) hekta yathokkhre. Houjik appellant oiriba (defendant No. 2) na puthorakpa masa ngakthoknabagi wafam adu karamna amasung karigi achumba machak yaode hairibano haiba pande. Defendant No. 1 na plaintiff ta matam matamgi sel piraki haibasi plaintiff na masana haijariba asidagi thorakpa amasung oihallakpa yaba sing adudi Trial Court amasung High Court anina appellant pu masa ngakthoknabagi ayaba pidanaba khannabada chitharamba malle. Wayel-shang singna defendant No. 1 bu masa ngakthoknabagi ayaba pikhidaba thouwong adugumna appellant asida toubayaro; ahoinadum eikhoigi mityengdadi appellant na hairiba asigi matung inna khannariba sing asi wayelningai oiba wafamni.

20. Wayel asigi mapung oiba fibamsingda eikhoigi oiba asengba motti appellant asigi wayelningai oiba machak lei, maru oina mahakna pifam thokpa singgi matangda amasung appellant ki ngakthoknaba machak asida achumba sukyao yaode haibadi yaro.

20.1. Wafamsida mamangda pijakhiba mityeng adugi matung inna, appellant-defendant No. 2 na mahakki pifam thokpaga mari leina masa ngakthoknabagi ayaba adu pibiramgadanami haina eikhoina loui; amasung madugidamk shingnariba wayel-yathang asi nakanda thamle.

21. Matang asida mathakta haikhibasing aduna appellant asibu fabam ama faoba thamdana masa ngakthoknabagi ayaba piramnaba khannaramgadabani, adubu matam aduda court asina appellant na Rs. 40,00,000/- (Forty lakhs) pirabadi magi mathakta leiriba yathang adu lephanbagi (stay) ayaba pikhi haibasi 17.08.2018 da takhiba yathang adudagi khangba ngammi. Madugi matungda tang 24.09. 2018 da taba yathang gi matung inna appellant na hainakhiba senfam adu numit mari ni chontharaga pirakkhi haiba court asina khangkhi amasung numit khara chontharaga pirakpa adusu ngakpikhi. Asigumba maram sing asi punna tasillaga amasung tourakliba claim asigi mawong matou amasung masa ngakthoknabagi puthorakpa wafam sing yengsillaba amasung defendant No. 1 na wakatkhiba adu High Court na namhatkhre haiba pumnamak yengsillaba matungda, eikhoina appellant-defendant No. 2 bu masa ngakthoknabagi ayaba piba haibasi achumba thouwongni haina loure; adum oinamak wayel-shang asina takhiba wayelgi matung inna appellant na pisillakpa senfam Rs.40,00,000/- asi kari tougadage amasung masiga mari leinana Trial Court na maram chaba wayel yathang pibadi yagani.

21.1. Appellant asi masa ngakthoknabagi ayaba pirabanina appellant ki maikeidagi pifam thokpa singgi heeramda pukhatlapa sing adu eikhoina khannararoi amasung masigi makha tabadi Trial Court na paikhatnaba yathang pire.

22. Maram aduna, wakat (appeal) asi mai pakle amasung High Court na tang 11.05.2018 da pikhiba shingnariba wayel-yathang amasung tang 18.09.2017 da Trial Court na defendant No. 2 ga mari leinana takhiba shingnariba wayel-yathang sing adu nakanda thamle; appellant asibu masa ngakthoknabagi ayaba pire; amasung appellant na pisillakpa senfam Rs.40,00,000/- asi mahakki masa ngakthoknabagi ayaba pinaba pisillakpani haina lougani. Hairiba senfam asi keidounagani haibagi matangdadi Trial Court na maram chaba yathang tagani amasung ain gi matung inna appellant-defendant No. 2 na haiba matung inna wayel makha chatthagadabni.

22.1. Houjik touriba wayel asigidamakti plaintiff na sel tinghalloi. (No costs).

Bibhuti Bhushan Bose
(Assisted by: Shubhanshu Das, LCRA)

Appeal allowed.