

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 16th October, 2018.**
+ **RFA 474/2017**

RENU AGGARWAL & ANR Appellants
Through: Mr. G.P. Singh, Adv.
versus

BALDEV RAJ SACHDEVA Respondent
Through: Mr. Vivek Luthra, Ms. Rema Luthra
and Mr. Deepak Lohchab, Adv.

AND

+ **RSA 30/2018 & CM No.6311/2018 (for stay) and CM
No.17963/2018 (under Section 151 CPC for directions).**

RENU AGGARWAL & ANR Appellants
Through: Mr. G.P. Singh, Adv.
versus

BALDEV RAJ SACHDEVA Respondent
Through: Mr. Vivek Luthra, Ms. Rema Luthra
and Mr. Deepak Lohchab, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. RFA No.474/2017 has been preferred against the judgment and decree [dated 15th February, 2017 in CS No.57755/2016 of the Court of the Additional District Judge-I (North)] of dismissal of application of the appellants/defendants for leave to defend the suit filed by the respondent/plaintiff under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) for recovery of Rs.21,84,400/-, comprising of principal amount of Rs.12,70,000/- and interest till the date of institution of the suit of Rs.9,14,400/-, along with future interest @ 1.5% per month till the date of realisation. Resultantly the suit of the respondent/plaintiff has been allowed for recovery of Rs.12,70,000/- but with interest w.e.f. 1st May, 2008 i.e. the date from which the interest was claimed in the suit but @ 10% per annum

till the date of realisation instead of @ 1.5% per month as claimed in the suit.

2. RSA No.30/2018 has been preferred against the judgment and decree [dated 24th January, 2018 in RCA No.50/2017 (CNR No.DLNW010053662017) of the Court of the Additional District Judge-3 (North-West)] of dismissal of First Appeal under Section 96 of the CPC preferred by the appellants against the judgment and decree [dated 2nd May, 2017 in CS No.59904/16 of the Court of the Additional Senior Civil Judge (North-West)] of dismissal of application filed by the appellants/defendants for leave to defend the suit under Order XXXVII of the CPC for recovery of Rs.2,36,000/- with interest at 2% per month and resultantly allowing the suit of the respondent/plaintiff to recover Rs.2,00,000/- with interest at 9% per annum from 1st October, 2008 i.e. from the date when the interest was claimed in the suit till the date of realisation.

3. RFA No.474/2017 came up first before this Court on 8th May, 2017 when the counsel for the respondent/plaintiff/decree holder appeared on caveat and accepted notice of the appeal. Vide order dated 21st August, 2017, execution of the money decree was stayed subject to the appellants/defendants/judgment debtors depositing the decretal amount in this Court by 22nd September, 2017. The appellants/defendants/judgment debtors preferred Special Leave Petition (C) No.25411/2017 to the Supreme Court against the order dated 21st August, 2017 and the Supreme Court vide order dated 22nd September, 2017, while issuing notice of the said SLP, stayed the operation of the order dated 21st August, 2017. The said SLP is stated to be still pending and the interim order therein still in operation.

However the same does not come in the way of hearing of this appeal which is otherwise ripe for hearing and in which the Suit Court record has been received.

4. RSA No.30/2018 came up first before this Court on 19th February, 2018. Vide order dated 22nd February, 2018, notice thereof was ordered to be issued and subject to the appellants/defendants/judgment debtors depositing the principal amount and 50% of the interest amount in this Court within six weeks, execution was stayed. The appellants/defendants/judgment debtors preferred SLP(C) No.7521/2018 against the order dated 22nd February, 2018 and the Supreme Court vide order dated 28th March, 2018, while issuing notice thereof, ordered the same to be tagged with SLP No.25411/2017 and stayed the operation of money decree without the appellants/defendants/judgment debtors being required to deposit the decretal amount and interest in terms of order dated 22nd February, 2018. The said SLP is also stated to be still pending consideration.

5. The counsel for the respondent/plaintiff/decreed holder states that he has filed CM No.17963/2018 for segregating the two appeals to be heard by the respective Roster Bench.

6. Both the appeals are before this Bench because on 17th April, 2018, when RFA No.474/2017 was listed, it was the contention of the counsel for the appellants/defendants/judgment debtors that both the appeals arose from money claims arising out of the same Settlement Agreement dated 1st February, 2008 and it was appropriate that both be heard together. Though the respondent/plaintiff/decreed holder was present in person on that date but

was not represented by his advocate and the respondent/plaintiff/decreed holder appearing in person did not object. This Court, vide order dated 17th April, 2018 in RFA No.474/2017, directed both the appeals to be listed together subject to orders of Hon'ble the Chief Justice. Hon'ble the Chief Justice in terms thereof has posted RFA No.474/2017 otherwise not on the Roster of this Bench before this Bench.

7. The counsel for the respondent/plaintiff/decreed holder has argued that while a Second Appeal has to be heard on substantial question of law only, a Regular First Appeal has to be heard on the questions of law as well as fact and thus there is a need to segregate the two.

8. No merit is found in the aforesaid contention. CM No.17963/2018 in RSA No.30/2018 is dismissed.

9. The counsel for the appellants/defendants/judgment debtors in both the appeals and the counsel for the respondent/plaintiff/decreed holder in both the appeals have been heard.

10. Though the suit from which RSA No.30/2018 arises was filed earlier in point of time, but it is deemed appropriate to set out hereinbelow the narration of the contents of the plaint in the suit subsequently filed and from which RFA No.474/2017 arises. It was the case of the respondent/plaintiff decreed holder therein, (i) that the two appellants/defendants/judgment debtors were known to the respondent/plaintiff/decreed holder and to the brother of the respondent/plaintiff/decreed holder since long and enjoyed family and friendly relations; (ii) that the appellants/defendants/judgment debtors approached the respondent/plaintiff/decreed holder on many occasions and requested for friendly loan/financial help and the

respondent/plaintiff/decreed holder and his brother always helped out the appellants/defendants/judgment debtors; (iii) that the said friendly loans were given by the respondent/plaintiff/decreed holder, partly in cash and partly through cheques; (iv) that on 1st February, 2008, both the appellants/defendants/judgment debtors approached the respondent/plaintiff/decreed holder for a friendly loan and after negotiations, the appellants/defendants/judgment debtors executed a Receipt-cum-Agreement dated 1st February, 2008 wherein the appellants/defendants/judgment debtors acknowledged the factum of taking loan to the tune of Rs.14,70,000/- from the respondent/plaintiff/decreed holder and his brother on many occasions; (v) as per the said Agreement dated 1st February, 2008, the loan was interest free up to 30th April, 2008 and w.e.f. 1st May, 2008 was to incur interest @ 1.5% per month; (vi) it was also agreed that the appellants/defendants/judgment debtors shall start repayment of the loan from 1st June, 2008 by making a payment of Rs.2,00,000/- each after every four months and shall pay interest on the remaining balance as per agreed rate; (vii) that the appellants/defendants/judgment debtors in terms of the said Agreement dated 1st February, 2008 issued and delivered to the respondent/plaintiff/decreed holder the following four cheques:-

“S.No.	Cheque No.	Dated	Amount	Bank
1.	861912	01.06.2008	2,00,000/-	UBI
2.	861911	01.10.2008	2,00,000/-	UBI
3.	861909	01.02.2009	2,00,000/-	UBI
4.	861910	01.6.2009	14,70,000/-	UBI”;

(viii) that the appellants/defendants/judgment debtors failed to repay the principal amount of Rs.14,70,000/- till 30th April, 2008 and therefore the respondent/plaintiff/decreed holder became entitled to charge interest w.e.f. 1st May, 2008 at 1.5% per month; (ix) that the cheques for Rs.2,00,000/- each also, were returned for the reason of “funds insufficient”, when presented for payment on due dates; (x) on assurance of the appellants/defendants/judgment debtors, the cheques were represented from time to time but were repeatedly returned for the reason of insufficiency of funds in the account on which the appellants/defendants/judgment debtors had issued the cheque; (xi) that the respondent/plaintiff/decreed holder thus instituted a suit for recovery of principal amount of cheque dated 1st October, 2008 for Rs.2,00,000/- along with interest and also instituted legal proceedings under Section 138 of the Negotiable Instruments Act, 1881; (xii) that an amount of Rs.25,28,400/- inclusive of interest was due jointly and severally from the appellants/defendants/judgment debtors to the respondent/plaintiff/decreed holder till the date of institution of the suit; and, (xiii) however since the respondent/plaintiff/decreed holder had earlier instituted the suit (from which RSA No.30/2018 arises) for recovery of Rs.3,44,000/-, the claim in this suit was confined to Rs.21,84,400/- only.

11. The appellants/defendants/judgment debtors sought leave to defend by filing an affidavit running into over 25 pages and full of repetition, but in essence pleading, (i) that the respondent/plaintiff/decreed holder is a chronic litigant, in the habit trapping innocent people in his fiscal net; (ii) that the respondent/plaintiff/decreed holder is engaged in multiple illegal businesses of money lending without holding a valid money lending

licence; (iii) that the respondent/plaintiff/decreed holder is engaged in running an illegal business of chit fund committees; (iv) that the respondent/plaintiff/decreed holder has filed a large number of cases against several persons; particulars of some of the said cases were given; (v) that since the business of chit fund being run by the respondent/plaintiff/decreed holder is illegal, the respondent/plaintiff/decreed holder makes payments to the members through cheque without maintaining any book of account and thereby avoids payment of tax; (vi) that the appellants/defendants/judgment debtors came under the influence of the respondent/plaintiff/decreed holder and became members of the chit fund run by the respondent/plaintiff/decreed holder; (vii) that the respondent/plaintiff/decreed holder, as per his practice, had taken blank signed cheques from the appellants/defendants/judgment debtors as security for the draw of chit; (viii) that the respondent/plaintiff/judgment debtor had represented to the appellants/defendants/judgment debtors that the respondent/plaintiff/decreed holder was taking the said cheques “as a security of the chit amount received by the deponent and would return back after completion of the chit schedule”; (ix) “however, despite completion of the chit schedule the plaintiff did not return the said blank signed cheques to the deponent despite being demanded by the deponent from time to time”; (x) that the respondent/plaintiff/decreed holder has instituted the suit by misusing the said cheques; (xi) that the cheques were given at different times and that is why the numbers thereof are not in serial; (xii) that the respondent/plaintiff/decreed holder/ is holding other cheques also of the appellants/defendants/judgment debtors; (xiii) that the

respondent/plaintiff/decreed holder has not produced his Income Tax Returns to show having advanced loan as claimed to the appellants/defendants/judgment debtors; (xiv) that the relationship of the appellants/defendants/judgment debtors with the respondent/plaintiff/decreed holder was only for the purpose of the chit fund; (xv) “it is specifically denied that the deponent acknowledged any friendly/existing loan of Rs.14,70,000/-”; (xvi) that the appellants/defendants/judgment debtors never took any loan from the respondent/plaintiff/decreed holder; (xvii) that the appellants/defendants/judgment debtors never asked the respondent/plaintiff/decreed holder to represent the cheques at any time; (xviii) that the appellants/defendants/judgment debtors, in reply to the legal notice preceding the suit, had stated all the said facts; and, (xix) “the plaintiff has filed the present proceedings relying upon forged, frivolous and fabricated averments as mentioned in the plaint and has sought to mislead this Hon’ble Court”.

12. The counsel for the appellants/defendants/judgment debtors and the counsel for the respondent/plaintiff/decreed holder, on enquiry state that the contents of the plaint and the contents of application of leave to defend in the suit from which RSA No.30/2018 arises are the same. Need to repeat the same is thus not felt.

13. Suffice it is to state that the Suit Court as well as the First Appellate Court in the judgments subject matter of RSA No.30/2018 and the Suit Court in the judgment subject matter of RFA No.474/2017, all have held that the pleas aforesaid of the appellants/defendants/judgment debtors, in the applications filed in the two suits for leave to defend, did not entitle the

appellants/defendants/judgment debtors to leave to defend. Though *Mechelec Engineers & Manufacturers Vs. Basic Equipment Corporation* (1976) 4 SCC 687 has in *IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd.* 2017 (1) SCC 568 been held to be not good law qua amended CPC, from the date of its pronouncement, but in ignorance of the same, has been referred to by the Suit Courts in the judgments subject matter of RSA No.30/2018 as well as RFA No.474/2017.

14. The controversy in both the appeals is thus confined to, whether on the pleas aforesaid in the applications for leave to defend, the appellants/defendants/judgment debtors are entitled to leave to defend and if at all entitled to leave to defend, to a conditional leave to defend subject to deposit or unconditional leave to defend.

15. The Settlement Agreement dated 1st February, 2008, on basis of which both the suits were filed under Order XXXVII of the CPC, is handwritten and in Hind language. However, the appellants/defendants/judgment debtors, along with memorandum of RFA No.474/2017 have filed an English translation of the same. The counsel for the appellants/defendants/judgment debtors, on enquiry states that though the English translation as has been filed by him along with this appeal was initially filed in the Suit Court by the respondent/plaintiff/decreed holder and on further enquiry states that the translation therein is correct. It is deemed appropriate to set out hereinbelow the said translation:-

**“TRUE TRANSLATED COPY OF FRIENDLY LOAN
RECEIPT
CUM AGREEMENT**

We Renu Aggarwal W/o Sh. Surender Aggarwal and Surender Aggarwal S/o Late Sh. Bhagwat Prasad, both R/o A-19, Kewal

Park Ext. Azad Pur, Delhi-11033, states as follows:

- 1. We both have friendly loan transactions with Sh. Baldev Raj Sachdeva and Sh. Kewal Krishan Sachdewa both S/o Late Sh. Bhagwan Dass Sachdeva, both R/o 85, Second Floor, Chander Lok, Delhi-110034 since 2001. We have taken friendly loan from the above said two persons many a times. Till today, i.e., 01.02.2008 our total friendly loan is Rupees Fourteen Lacs and Seventy Thousand only, which has been received by both of us partly in cash and partly through cheques.*
- 2. The above stated friendly loan is interest free till 30.04.2008.*
- 3. From 01.05.2008, we shall pay an interest @ 1.5% per month in cash and will take a receipt.*
- 4. On 01.06.2008 we shall pay a sum of Rupees Two lacs towards the part payment of the friendly loan of Rupees Fourteen Lacs and Seventy thousand only and shall pay the interest on the balance amount of Rupees Twelve Lacs and Seventy thousand Only.*
- 5. Similarly, we will quarterly pay a sum of Rupees Two lacs towards the part payment of the friendly loan and shall pay the interest @ 1.5% per month on the balance amount.*
- 6. If our loan is sanctioned from any bank then we will re-pay the entire balance amount in one shot.*
- 7. For the re-payment of the above said friendly loan, we have issued the following cheques:*

S.No.	Dated	Cheque No.	Amount	Bank	Name
1.	01.6.2009	861910	14,70,000/-	UBI Azadpur	Baldev Raj Sachdeva
2.	01.06.2008	861912	2,00,000/-	UBI Azadpur	Baldev Raj Sachdeva
3.	01.10.2008	861911	2,00,000/-	UBI Azadpur	Baldev Raj Sachdeva
4.	01.02.2009	8619092	2,00,000/-	UBI Azadpur	Baldev Raj Sachdeva

*Amt.
Rs.14,70,000/-
thousand*

*Amt.
Rs. Fourteen Lacs and Seventy
Only*

Sd/-

Surender Aggarwal

1/02/2008”

Sd/-

Renu Aggarwal

16. Having not found any denial in the applications for leave to defend, of the aforesaid document, I have enquired so from the counsel for the appellants/defendants/judgment debtors.

17. The counsel for the appellants/defendants/judgment debtors, though unable to show any denial thereof in the leave to defend applications, has drawn attention to the following paragraph in the rejoinder filed by the appellants/defendants/judgment debtors to the reply of the respondent/plaintiff/decreed holder to leave to defend applications of the appellants/defendants/judgment debtors:-

“The alleged loan agreement dated 01.02.2008 was infact not any agreement but only signature of the defendants were taken on a blank paper by the plaintiff. Even otherwise the alleged loan agreement dated 01.02.2008 was already expired when the case was filed. It is further submitted that as per contents of the legal notice dated 17.04.2012, the plaintiff has himself admitted that he is a professional money lender (without holding any valid money lending license).”

18. It is evident that the appellants/defendants/judgment debtors have not denied the signatures on the document aforesaid. On enquiry, it is informed by the counsel for the appellants/defendants/judgment debtors and agreed upon by the counsel for the respondent/plaintiff/decreed holder, that the handwriting on the original document is of the brother of the respondent/plaintiff/decreed holder.

19. The counsel for the appellants/defendants/judgment debtors has filed written arguments and on enquiry states that the same cover the entire gamut of his arguments. It is deemed appropriate to notice the contentions of the counsel for the appellants/defendants/judgment debtors from the said written arguments at pages 375 to 378 of the paper book in RFA No.474/2017. It is the contention of the appellants/defendants/judgment debtors in the written arguments, besides those in the applications for leave to defend, (i) that the respondent/plaintiff/decree holder, in his amended legal notice dated 17th April, 2017, detailed the date-wise loan amount which totals Rs.9.35 lacs; (ii) in the said notice, the respondent/plaintiff/decree holder showed liability of the appellants/defendants/judgment debtors as Rs.25,06,350/- but called upon the appellants/defendants/judgment debtors to pay Rs.21,65,350/- only; (iii) there was thus contradiction in the loan amounts; (iv) that the suits were barred by Section 3 of the Punjab Registration of Money Lenders Act, 1938; (v) that the respondent/plaintiff/decree holder had not shown the source of his income with respect to the loan claimed to be advanced of Rs.14.70 lacs; reliance is placed on ***G. Pankajakshi Amma Vs. Mathai Mathew*** (2004) 12 SCC 83; (vi) that the cheques having been given as security for chit amount received, the suits were liable to be dismissed in terms of ***M.S. Narayana Menon Vs. State of Kerala*** (2006) 6 SCC 39; (vii) that the suit, subject matter of RFA No.474/2017 was barred by Order II Rule 2 of the CPC owing to the earlier suit subject matter of RSA No.30/2018 being filed on the same cause of action; and, (viii) that the Courts have not realised that the aforesaid raise triable questions, entitling

the appellants/defendants/judgment debtors to leave to defend.

20. No merit is found in any of the contentions of the counsel for the appellants/defendants/judgment debtors for the reasons hereinafter appearing:-

- (a) The appellants/defendants/judgment debtors, as aforesaid, do not deny their signatures on the writing acknowledging the loan of Rs.14.70 lacs. The original writing in Hindi language, immediately below it has the endorsements “Amt. Rs.14,70,000.00” and “Amt. Rs. Fourteen lac & Seventy Thousand only” respectively in English language, above the admitted signatures of each of the two appellants/defendants/judgment debtors. The placement of the endorsements aforesaid and the signatures belie the plea of the appellants/defendants/judgment debtors of their signatures having been obtained on blank papers.
- (b) If on such pleas, leave to defend were to be granted, the same would not serve the purpose for which Order XXXVII incorporated in the CPC to provide summary procedure for disposal of some kind of suits and would result in leave to defend being granted qua all suits filed under Order XXXVII of the CPC, making the procedure for disposal thereof more elaborate.
- (c) Similarly, issuance of the cheques for Rs.2 lacs each, which have been returned unpaid for the reason of insufficiency of funds in the account of the appellants/defendants/judgment

debtors on which the cheques were issued, has also not been denied. Section 118(a) of the Negotiable Instruments Act raises a presumption of the cheques having been issued for consideration and the appellants/defendants/judgment debtors have in their leave to defend not rebutted the presumption or raised any pleas which requires to be put to trial.

- (d) The reason given for signing blank papers as well as for delivering blank signed cheques is of the appellants/defendants/judgment debtors having received the chit fund amount and to secure the payment of the balance chit instalments.
- (e) However the said pleas are vague. It has not been stated, on which date and month the appellants/defendants/judgment debtors joined the chit fund, what was the value of the chit fund, what was the chit amount and what was the time period of the chit fund and instalments of what amount and for how much duration were to be paid, what was the chit fund amount picked up by the appellants/defendants/judgment debtors and till when were the chit instalments to be paid. Merely because a plea of the cheques and blank signed papers having been given towards chit amount without anything to show that the appellants/defendants/judgment debtors in fact participated in the said chit fund operated by the respondent/plaintiff/decreed holder, do not amount to taking a plea in law or on which leave to defend can be granted. Again, if on such pleas leave to

defend were to be granted, instituting a suit under Order XXXVII of the CPC will merely increase the length of the time for disposal of the suit rather than entitling the suit to be tried summarily.

- (f) Though the appellants/defendants/judgment debtors have accuse the respondent/plaintiff/decreed holder of running an illegal chit fund to save tax, but the appellants/defendants/judgment debtors have themselves not stated how much amount in cash they paid towards chit fund and how much amount of chit fund they received and whether the appellants/defendants/judgment debtors have reflected all the said amounts in their Income Tax Returns.
- (g) The same also shows the *mala fide* nature of the plea in this regard and of the attempt to defeat the claim of the respondent/plaintiff/decreed holder and the liability of the appellants/defendants/judgment debtors on such pleas. The appellants/defendants/judgment debtors, being in the same boat, are not entitled to take such pleas.
- (h) As far as reliance by the counsel for the appellants/defendants/judgment debtors on ***G. Pankajakshi Amma*** supra is concerned, the plaintiff in a suit for recovery of money in that case had failed to establish the loan and the suit was based entirely on promissory notes. The plaintiff in the said suit however in his cross-examination admitted chit transaction between the parties and it was in the light of the

said facts that the observations relied upon by the counsel for the appellants/defendants/judgment debtors came to be made. It is not so in the present case. Moreover in (i) **Krishna P. Morajkar Vs. Joe Ferrao** 2013 SCC OnLine Bom 862; (ii) **Sheela Sharma Vs. Mahendra Pal** 2016 SCC OnLine Del 4696; and, (iii) **K. Arun Kumar Vs. R. Moorthy** 2017 SCC OnLine Mad 1353 it has been held that the lapse if any by a claimant before the Court in filing of income tax returns cannot be a reason for denying the claim, as that is a concern of the Income Tax Authorities. The appellants/defendants/judgment debtors in the present case also are free to complain of the illegal transactions if any of the respondent/plaintiff/decreed holder, to the concerned authorities but cannot wish away their liability to the respondent/plaintiff/decreed holder as evident from the writing bearing admitted signatures and from the issuance of cheques.

- (i) Similarly as far as the plea of the respondent/plaintiff/decreed holder carrying on business of money lending without obtaining licence is concerned, it has been held in (i) **Sitaram Shrawan Koshti Vs. Bajya Parnya Bhoi** AIR 1941 Nag 177; (ii) **Munagala Yadgiri Vs. Pittala Veeriah** 1957 SCC OnLine AP 193; and, (iii) **Tara Singh Vs. Nathu Ram** AIR 1979 P&H 75 that before the provisions of the Punjab Registration of Money Lenders Act can be applied, it must be proved by the party seeking to apply and take advantage of the provisions

that the plaintiff is a money lender. The appellants/defendants/judgment debtors have not made any averments in the applications for leave to defend, which if proved would establish the respondent/plaintiff/decreed holder as a money lender. A bare plea does not suffice. Even otherwise, a loan as defined in Section 2(8) of the Punjab Registration of Money Lenders Act specifically excludes an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act. Thus the bar under Section 3 would not be attracted to a loan given on the basis of a negotiable instrument such as a cheque. Reference in this regard may be made to *Virender Singh Vs. Deepak Bhatia* 2013 SCC OnLine Del 1335 (SLP CrI. No.5068/2013 preferred whereagainst has been dismissed as withdrawn vide order dated 12th July, 2013) and *Deepak Bhatia Vs. Virender Singh* 2015 SCC OnLine Del 12183.

- (j) Though the appellants/defendants/judgment debtors in the applications for leave to defend pleaded that they demanded the cheques given as security for chit instalments after paying all the chit instalments and the respondent/plaintiff/decreed holder did not return the cheques, but again neither any dates thereof have been given nor is it the plea of the appellants/defendants/judgment debtors that the appellants/defendants/judgment debtors, on such refusal of the respondent/plaintiff/decreed holder, took any steps whatsoever

of stopping payment of the said cheques or issuing notice to the respondent/plaintiff/decreed holder demanding return of the cheques or of making any complaint against the respondent/plaintiff/decreed holder. Such plea has been taken only when faced with the monetary demand due thereunder and which action belies any faith therein.

- (k) Supreme Court, in *IDBI Trusteeship Services Ltd.* supra has held that *Mechelec Engineers & Manufacturers* supra was pronounced in the context of CPC as it stood prior to amendment thereof in the year 1976 and pursuant to the amendment the same is no longer good law. Applying the test laid down in *IDBI Trusteeship Services Ltd.* supra, the appellants/defendants/judgment debtors, on the averments in the applications for leave to defend, have been rightly denied leave to defend by three Courts.
- (l) There is no contradiction in the demands or the version of the respondent/plaintiff/decreed holder, and the counsel for the appellants/defendants/judgment debtors has not even argued in this respect.

22. There is no merit in the appeals.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 16, 2018

‘pp’..