

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.803/2018**

% 24th September, 2018

RAM SNEHI

..... Appellant

Through: Mr. Amarveer Singh Bhullar
and Mr. Arvind Kr. Chauhan,
Advocates (9868214878,
9999118899)

versus

NEERAJ KUMAR TIWARI

..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 38828/2018 (delay in filing) & CM No. 38829/2018 (delay in re-filing)

For the reasons stated in the applications, delays in filing and re-filing are condoned.

CMs stand disposed of.

RFA No. 803/2018 & CM No. 38827/2018 (stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the Judgment of the Trial Court dated 26.04.2018 by which the trial court has decreed the suit filed by the respondent/plaintiff under Order XXXVII CPC by dismissing the leave to defend application filed by the appellant/defendant.

2. The facts of the case are that the respondent/plaintiff filed the subject suit pleading that the appellant/defendant was given by the respondent/plaintiff a loan for a total sum of Rs. 6,00,000/-. Out of the amount of Rs.6,00,000/-, a sum of Rs. 1,65,000/- was paid by cheque on 13.03.2017, another sum of Rs. 2,00,000/- was paid by cheque on 06.05.2014, and a further balance sum of Rs. 2,35,000/- was paid in cash in March 2014. The appellant/defendant in confirmation of the loan signed the Loan Agreement dated 26.05.2014 as also the Receipt of the same date for a sum of Rs. 6,00,000/-. Loan was repayable in 11 months but since the same was not repaid hence the subject suit under Order XXXVII CPC was filed.

3. The appellant/defendant filed his leave to defend application by pleading that the Loan Agreement and Receipt are not valid documents because the said two documents were signed by the appellant/defendant but they were not signed towards the alleged loan of Rs. 6,00,000/- but because the respondent/plaintiff, who was working in HDFC Bank, stated that he would assist the appellant/defendant in getting a loan on his car and through this loan taken from the bank, a part amount would be used for repaying the loan taken by appellant/defendant from the father of respondent/plaintiff. It was pleaded by the appellant/defendant that in March 2014, he had taken a loan of Rs. 1,65,000/- from the father of the respondent/plaintiff and thereafter another loan of Rs. 2,00,000/- in May 2014 and these loans were repaid. It is pleaded by the appellant/defendant that he signed the Loan Agreement and Receipt dated 26.05.2014 in blank and not for confirmation of the loan which the respondent/plaintiff alleges, but the same were signed for taking of the loan on car from HDFC Bank. It was also pleaded by the appellant/defendant that the loan taken from the father of the respondent/plaintiff was repaid back partly in cash and partly by

supplying groceries to the father of the respondent/plaintiff. It was also pleaded by the appellant/defendant that when he took loan from the father of the respondent/plaintiff, he gave two cheques as security to the father of the respondent/plaintiff being cheque nos. 845153 and 845157, but these cheques were not returned by the father of the respondent/plaintiff even after repayment of loan on the ground that these cheques have been misplaced.

4. The trial court has dismissed the leave to defend application by observing that the principles with respect to grant of leave to defend are those as have been stated by the Supreme Court in its recent judgment in the case of **IDBI Trusteeship Services Ltd. v. Hubtown Ltd., (2017) 1 SCC 568** and relevant paragraphs of which judgment discussing principles of leave to defend read as under:-

"17. Accordingly, the principles stated in paragraph 8 of *Mechelec's* case will now stand superseded, given the amendment of Order XXXVII Rule 3, and the binding decision of four judges in *Milkhiram's* case, as follows:

17.1. If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the Plaintiff is not entitled to leave to sign judgment, and the Defendant is entitled to unconditional leave to defend the suit.

17.2 If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good

defence, the Plaintiff is not entitled to sign judgment, and the Defendant is *ordinarily* entitled to unconditional leave to defend.

17.3 Even if the Defendant raises triable issues, if a doubt is left with the trial judge about the Defendant's good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4 If the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5 If the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the Plaintiff is entitled to judgment forthwith.

17.6 If any part of the amount claimed by the Plaintiff is admitted by the Defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the Defendant in court."

5. The trial court has thereafter rightly observed that the appellant/defendant does not deny his signatures on the Loan Agreement and Receipt and that the appellant/defendant also was not

able to prove that he had taken any loan, not from the respondent/plaintiff, but from the father of the respondent/plaintiff, of a sum of Rs. 3,65,000/-. Further, the appellant/defendant could not prove that how this loan was repaid by him to the father of the respondent/plaintiff as there is no document in support of the repayment of the alleged loan taken by the respondent/plaintiff from the father of the respondent/plaintiff nor are there any documents to show that father of the respondent/plaintiff was supplied groceries by the appellant/defendant. The trial court has also rightly held that the stand of the appellant/defendant cannot be believed, because if he had given two cheques as security to the father of the respondent/plaintiff, then why were the said cheques not taken back on repayment of the loan to the father of the respondent/plaintiff. Furthermore, if the said cheques were not being returned, then why a legal notice or any letter was not sent to the father of the respondent/plaintiff to return the alleged security cheques. The trial court has also held that the case put up by the appellant/defendant is not believable of his having signed the Loan Agreement and Receipt dated 26.05.2014 on the ground that

the respondent/plaintiff would have got for him a loan on car from HDFC Bank.

6. I completely agree with the reasoning and conclusions of the trial court because appellant/defendant besides making self-serving statements, has not done or filed anything to substantiate his case, whereas on the other hand, the respondent/plaintiff has *ex facie* established his case through documents, with the fact that if the loan was taken by the appellant/defendant from the father of the respondent/plaintiff then why were the security cheques allegedly given to the father of the respondent/plaintiff not claimed back by the appellant/defendant by issuing any notice or letter.

7. I would also like to note that out of the total loan amount of Rs. 6,00,000/-, a sum of Rs.3,65,000/- was received by the appellant/defendant by means of cheques from the account of the respondent/plaintiff and therefore, the trial court has rightly held that loan was given by the respondent/plaintiff and not his father. Also, the respondent/plaintiff in the facts of the present case need not have proved the source of funds available to him once the

appellant/defendant admitted his signatures on the loan agreement as also the receipt.

8. There is no merit in the appeal. Dismissed.

SEPTEMBER 24, 2018/ib

VALMIKI J. MEHTA, J

