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

+ C.R.P. 157/2016

ANIL KUMAR CHOPRA Petitioner
Through Mr.Rajat Katyal and Ms.Ankita
Goyal, Advocates.

versus

M L MANCHANDA Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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23.09.2016

CM No. 35062-63/2016 (exemption)

Exemption is allowed subject to all just exceptions.

C.R.P. 157/2016 and CM No. 35060/2016 (stay) and 35061/2016 (for condonation of delay in 103 days in re-filing the present petition)

1. By the present petition, the petitioner seeks to impugn the order dated 04.04.2016 by which his application for leave to defend under Order 37 CPC was allowed and he was granted conditional leave to defend subject to deposit of an amount of Rs.2.50 lacs.
2. The respondent has filed the suit for recovery of Rs. 5,20,000/- stating that the petitioner had approached the respondent for an advance of Rs.5,00,000/- and hence, a total sum of Rs.3,60,000 + Rs.1,60,000/- was given to the petitioner. It is also further urged that the petitioner issued 13

post dated cheques amounting to Rs. 40,000/- and when the cheques were presented, the cheques were returned back with the remarks “Account Closed”. Hence, the present suit has been filed.

3. In the leave to defend application, it was the stand of the petitioner that in course of business transaction between the parties, as per the practice, the petitioner had handed over some blank cheques as a security to the son of the respondent. The petitioner claims to have made timely and complete payment in respect of the goods supplied by the firm of the son of the respondent in 2007. It is urged that having received the full payment, instead of returning the cheques, these cheques were misused by the son of the respondent.

4. The trial court by the impugned order noted that total 13 cheques have been issued by the petitioner which has not been denied by the petitioner. On the basis of this, the trial court concluded that it cannot be said that the defence raised by the petitioner is moonshine and not a good defence and granted conditional leave to defend subject to deposit of an amount of Rs.2.50 lacs.

5. Learned counsel appearing for the petitioner submits that the order is a non-speaking order and fails to give reasons as to why a conditional leave to defend has been granted. Various averments made by the petitioner, it is urged, have not been dealt with by the trial court. He also points out that the respondent and his relatives have been filing several litigations against the petitioner including a suit which is filed by Smt. Reena Manchanda, the daughter-in-law of the respondent where also post dated cheques have been given and the petitioner was granted unconditional leave to defend. Similarly, another suit is said to have been filed by the son of the

respondent, namely, Sh. Rajeev Manchanda where also unconditional leave to defend was granted.

6. A perusal of the impugned order shows that these judgments were not placed before the trial court when the matter was argued. It is appropriate that the petitioner is given liberty to file a review petition before the trial court to bring to the notice of the trial court these judgments and to also whether they support defence raised by the petitioner.

7. Hence, leave and liberty is granted to the petitioner to move an appropriate review petition before the trial court pointing out above facts. In case such a review petition is filed within 10 days from today, the trial court is requested to dispose off the same in accordance with law.

8. With the above observations, the present petition stands disposed off.

9. Copy of the order be given Dasti under the signatures of the Court Master.

JAYANT NATH, J

SEPTEMBER 23, 2016

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