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

+ CM(M) 1087/2016

PAVIT SINGH

..... Petitioner

Through Mr. Tanmaya Mehta, Ms. Mudita
Sharda and Mr. S. Anand, Advocates.

versus

EKTA BHATT

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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09.11.2016

CM No. 40010/2016 and 40012/2016 (exemption)

Allowed subject to all just exceptions.

CM(M) 1087/2016 and CM NO. 40011/2016 (stay)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 10.06.2016 passed by the trial court granting unconditional leave to defend to the respondent in a summary suit filed by the petitioner.

2. The suit is filed for recovery of Rs. 10 lacs. The suit is based on a promissory note which is said to have been executed by the respondent in her own handwriting on 26.06.2014 whereby it is stated that she has taken about Rs.8 lacs since 2010 and for about Rs. 2 lacs' worth, valuables/mobiles. She has promised to pay full amount within a period of

six months.

3. The trial court granted unconditional leave to defend on the following grounds:-

(a) In para 3 of the reply filed by the petitioner, it is stated that the plaintiff “is claiming Rs.8 lacs and not Rs. 10 lacs”. Hence, it is held that this clause is at variance with the prayer clause

(b) It is further stated that as per the promissory note dated 26.06.2014, Rs.8 lacs have been taken by the respondent from the petitioner since 2010. However, in the plaint there is a specific averment that the petitioner advanced Rs. 8 lacs to the respondent. The impugned order further states that this averment is at complete variance to the stand taken in the reply to the application for leave to defend.

(c) No proof has been attached to show that the petitioner had cash available of Rs. 8 lacs.

4. Learned counsel for the petitioner submits that the execution of the promissory note is not denied by the respondent. A story is sought to be concocted by the respondent to claim that the promissory note which is in the handwriting of the respondent was signed under coercion and threat. He submits that even till today, to the best knowledge of the petitioner, no complaint has been filed with the police on the alleged incident which took place in June 2014. He submits that a party cannot be allowed to get away by making blatantly false allegations on the face of it.

5. A perusal of the impugned order would show that the material proposition, namely, the effect of the alleged promissory note dated

26.06.2014 has not been gone into by the trial court. The trial court has also not dealt with the defence which is sought to be raised by the respondent. The trial court has instead gone into some alleged mistakes in the pleadings of the parties which at best would be a curable/explainable defect.

6. In the light of the above, granting leave to the petitioner to file a review petition before the concerned court seeking review of the impugned order, the present petition is disposed of. In case the review petition is filed within two weeks from today, the trial court is requested of deal with the same in accordance with law and dispose of the same as expeditiously as possible preferable within two months from today.

7. In case any adverse order is passed, the petitioner is at liberty to take steps as per law.

8. With the above observations, the present petition and all pending applications stand dismissed.

JAYANT NATH, J

NOVEMBER 09, 2016

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