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

+ CM(M) 988/2016 & CM Nos.35980-81/2016

SATISH KUMAR GUDHENIA

..... Petitioner

Through

Mr.Ajay Chaudhary & Mr.Parambir
Singh, Advocates

versus

YOGENDER KUMAR SHARMA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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18.01.2017

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 19.05.2016 by which an application for leave to defend the suit was allowed but subject to payment of Rs.3,35,000/-.
2. The respondent has filed a suit under Order 37 CPC for recovery of Rs.3,35,000/- on account of loan given by the respondent to the petitioner. It is averred in the plaint that the same was a friendly interest free loan and on receipt of the loan, the petitioner is said to have handed over two cheques amounting to Rs.1.60 lacs and Rs.1.75 lacs respectively. When these cheques were presented they were returned by the banker stating “payment stopped by the drawer.”
3. The trial court by the impugned order noted that the petitioner has not disputed his signatures on the two cheques as well as agreement dated

16.03.2012. What the petitioner claims is that a loan of Rs.1 lac was taken somewhere in January 2012 which was returned. Another loan of Rs.1 lac was taken somewhere in March- April, 2012 which was also returned. The submission of the petitioner was noted that the respondent has forcibly taken some blank signed cheques from the petitioner which were misused by the respondent. It was also noted that the petitioner had been convicted under Section 138 of the Negotiable Instruments Act (*hereinafter referred to as the 'NI Act'*) and an appeal was filed against the conviction order and the same is pending. Based on the above, the trial court granted leave to defend but directed the petitioner to deposit a sum of Rs.3,35,000/-.

4. When this matter came up on 28.09.2016, this court had noted the submission of the petitioner that against the order of conviction under Section 138 of the NI Act, the petitioner had filed an appeal before the Additional Sessions Judge who has reversed the judgment of the MM noting that the guilt of the petitioner is not proved beyond reasonable doubts. It is also stated that principle amount received by the petitioner has been repaid to the respondent.

5. The learned counsel for the petitioner has taken me through the judgment of the appellate court in the appeal filed by the petitioner. The court of Additional Sessions Judges has come to the conclusion that the respondent did not have an attitude to state the truth at least voluntarily and there are some hidden facts that the said respondent did not want to disclose.

6. In view of the above, in my opinion, there are material changes after the impugned order dated 19.05.2016 has been passed. When the impugned order was passed, the petitioner had been convicted of the offence under Section 138 of the NI Act by the MM. Thereafter, the appellate court has set

aside the conviction and allowed the appeal of the petitioner.

7. Keeping into account the above facts, observations and the contentions of the petitioner, in my opinion, the impugned order has to be modified. The amount to be deposited by the petitioner is reduced to Rs.1 lac. The petitioner has already deposited a sum of Rs.1 lac in compliance with the order dated 28.09.2016 passed by this court.

8. I may note that the respondent has been served but none has appeared on his behalf.

9. The petition is accordingly allowed. All the pending applications are also allowed.

JAYANT NATH, J.

JANUARY 18, 2017/v