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

+ CM(M) 597/2017

AMITABH TALWAR

..... Petitioner

Through: Mr.Samrat Jasra, Advocate

versus

PRAMOD KUMAR RAY

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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26.05.2017

CM No.20289/2017

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

CM(M) 597/2017

1. The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India impugning the order dated 21st February, 2017 whereby in the Civil Suit No.55590 filed by the petitioner/plaintiff under Order XXXVII CPC, the learned Trial Court has granted unconditional leave to defend to the respondent.
2. Learned counsel for the petitioner has submitted that unconditional leave to defend could not have been granted by the learned Trial Court especially when the respondent has not denied his signature on the loan agreement, payment receipts as well the cheque which was dishonoured on presentation and was admittedly issued by the respondent.

3. The Civil Suit No.55590/2016 was filed by the petitioner/plaintiff pleading the following facts:-

(i) The petitioner/plaintiff advanced a loan of ₹4,00,000/- to the respondent/defendant and at that time loan agreement, receipts were also executed on 9th October, 2014.

(ii) Out of the loan amount of ₹4,00,000/-, ₹2,00,000/- was given by cheque and ₹2,00,000/- in cash. The amount was repayable on 9th July, 2015 and by that time the total amount due along with interest @2% per month was ₹4,80,000/-.

(iii) The respondent/defendant issued a cheque dated 10th July, 2015 for a sum of ₹4,80,000/- to discharge his liability but the cheque was dishonoured on presentation for the reason that funds were insufficient.

4. The application seeking leave to defend was filed by the respondent/defendant raising the following pleas:-

(i) Earlier on 4th October, 2012 also he borrowed a sum of ₹1,70,000/- out of which ₹1,10,000/- was returned vide four cheques. Balance amount of ₹60,000/- was adjusted towards the grocery supplied by him to the petitioner/plaintiff.

(ii) In the month of September, 2014 also respondent/defendant took a loan of ₹2,00,000/- from the petitioner/plaintiff and at that time the petitioner/plaintiff obtained blank signed cheque from him as security and also obtained his signature on other blank loan documents. He has already paid the loan amount as grocery of ₹1,20,000/- was supplied and balance amount of ₹80,000/- was paid in cash.

(iii) The blank cheque has been misused by the petitioner/plaintiff after filling up the amount of ₹4,80,000/- though no such amount was due.

5. Vide impugned order dated 21st February, 2017 unconditional leave to defend has been granted by the learned Trial Court for the following reasons:

“10. In the present case the defendant is not merely denying the version of the plaintiff but is also providing its own version along-with the documents and defendant raised a plausible defence. It is an established law that even if the defendant raises a ‘plausible defence’ the leave should be granted. In the present case the defendant’s version emerges from the series of events as averred in the affidavit and indicate a complex fact-matrix referring to the conduct of the plaintiff. The same needs to be proved. Of course the plaintiff will get a fair chance to prove its version. Leave granted. No condition imposed.

12. Put up for filing of WS with advance copy to the plaintiff and rejoinder, if any, on 25-05-2017.”

6. Learned Trial Court has exercised the discretion to grant unconditional leave to defend observing that the facts pleaded by the parties are required to be impugned during trial.

7. In the decision reported as *Defiance Knitting Industries (P) Ltd. v. Jay Arts*, (2006) 8 SCC 25, Hon’ble Supreme Court, after setting out the amended Order XXXVII CPC while referring to Mechelec’s case, laid down the following principles –

“While giving leave to defend the suit the court shall observe the following principles:

(a) If the court is of the opinion that the case raises a triable issue then leave to defend should ordinarily be granted unconditionally. See Milkhiram (India) (P) Ltd. v. Chamanlal Bros. [AIR 1965 SC 1698 : 68 Bom LR 36] The question whether the defence raises a triable issue or not has to be ascertained by the court from the pleadings before it and the affidavits of parties.

(b) If the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to

raise or that the defence intended to be put up by the defendant is frivolous or vexatious it may refuse leave to defend altogether. Kiranmoyee Dassi v. Dr. J. Chatterjee [AIR 1949 Cal 479: 49 CWN 246] (noted and approved in Mechelec case [(1976) 4 SCC 687 : AIR 1977 SC 577]).

(c) In cases where the court entertains a genuine doubt on the question as to whether the defence is genuine or sham or whether it raises a triable issue or not, the court may impose conditions in granting leave to defend.” [para 13]

8. The facts pleaded by the parties involve not only the cash transaction by the petitioner/plaintiff but also the fact as to whether the cheque on the basis of which this claim is filed was signed blank and given as security required by the petitioner/plaintiff or it was issued towards discharge of the liability of ₹4,80,000/-.
9. The learned Trial Court found it to be a case raising triable issues and granted the leave unconditionally.
10. The impugned order does not require any interference by this Court as these facts can be proved only after the parties are given opportunities to lead evidence.
11. The petition is dismissed.

PRATIBHA RANI, J.

MAY 26, 2017
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