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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 708/2017 & CM No.24411/2017 (for stay)
SUKHBIR SINGH Petitioner

Through: Mr. Rakesh Kakar, Adv.

Versus

PRATAP SINGH Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **14.07.2017**

CM No.24412/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM (M) No.708/2017 & CM No.24411/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order dated 6th June, 2006 of the Court of Additional District Judge (ADJ)-04, South District, Saket Court, New Delhi in Civil Suit No.6887/2016 filed by the plaintiff under Order XXXVII of the CPC of grant of leave to defend to the respondent / defendant.

4. Though I am of the view that against the order of grant of leave to defend a Revision Petition under Section 115 of the CPC lies and the remedy under Article 227 of the Constitution of India cannot thus be invoked but rather than rejecting this petition with liberty to the petitioner to take appropriate remedy, the counsel for the petitioner / plaintiff has been heard.

5. The suit under Order XXXVII of the CPC has been filed on the basis of a cheque issued by the respondent / defendant purportedly in return of the

loan which the petitioner / plaintiff claims to have given to the respondent / defendant.

6. The respondent / defendant in his application for leave to defend gave explanation for the cheque and disputed the loan and rather pleaded that the story of the loan was palpably false inasmuch as at the contemporaneous time the relations between the petitioner / plaintiff and the respondent / defendant were not good and there were criminal complaints filed by the respondent / defendant against the petitioner / plaintiff.

7. I have enquired from the counsel for the petitioner / plaintiff as to how was the loan granted.

8. The counsel for the petitioner / plaintiff states that the loan of Rs.5 lac claimed to have been given by the petitioner / plaintiff to the respondent / defendant was in cash.

9. On enquiry as to the source of the said cash, it is stated that the petitioner / plaintiff had collected the said amount from his various friends and relatives.

10. On further enquiry whether the petitioner / plaintiff has refunded the said monies to friends and relatives and / or whether the said friends and relatives have made any demand on the petitioner / plaintiff, the reply is in the negative and it is stated that the petitioner / plaintiff will repay to the friends and relatives after recovering the same from the respondent / defendant.

11. Qua the contemporaneous relationship, it is stated that the complaint by the respondent / defendant against the petitioner / plaintiff is of 29th August, 2013 but the loan was given in the first week of August, 2013. It is

further stated that the summons of the complaint dated 29th August, 2013 were issued in July, 2014 and served on the petitioner / plaintiff in September, 2014.

12. The counsel for the petitioner / plaintiff however on being asked, states that it was not the plea in the plaint that the loan was given in the first week of August, 2013.

13. In the aforesaid state of affairs, no ground for interference in the discretion exercised by the learned Additional District Judge granting leave to defend to the respondent / defendant is made out. Reference can be made to *Mechelec Engineers & Manufactures Vs. Basic Equipment Corporation* (1976) 4 SCC 687 laying down that it is only in cases where the defence is patently dishonest or so unreasonable that it could not reasonably be expected to succeed that the exercise of discretion by Trial Court to grant leave unconditionally may be questioned.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 14, 2017

‘gsr’..