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

+ CM(M) 128/2017 & CM No.22926/2017 (for directions)

BIRO

..... Petitioner

Through: Mr. Rajeev Singh Chandan, Adv.

Versus

BIJENDER KUMAR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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26.10.2017

1. This petition under Article 227 of the Constitution of India impugns the order [dated 21st September, 2016 in Civil Suit No.174/2016 of the Court of Additional District Judge-05 (ADJ), Dwarka Courts, Delhi] granting leave to the petitioner / defendant to defend the suit filed by the respondent / plaintiff under Order XXXVII of the Code of Civil Procedure, 1908 (CPC), for recovery of Rs.8 lacs with interest, on the condition of the petitioner / defendant depositing a sum of Rs.4 lacs.

2. The petition was entertained and notice thereof ordered to be issued and vide *ex parte* ad-interim order dated 2nd March, 2017 which continues to be in force, subject to the petitioner / defendant depositing Rs.1 lac instead of Rs.4 lacs, permission was given to the petitioner/defendant to file written statement. The petitioner / defendant did not deposit the said sum of Rs.1 lac also within the time granted by this Court and on 3rd July, 2017 a further period of one week was granted to the petitioner / defendant to deposit the said Rs.1 lac.

3. Notice of the petition ordered to be issued to the respondent / plaintiff is reported to have been served. None appears for the respondent / plaintiff.
4. The counsel for the petitioner / defendant, on enquiry, states that the amount of Rs.1 lac was deposited within the time extended from 3rd July, 2017 but has no proof thereof.
5. Believing the statement of the counsel for the petitioner / defendant and clarifying that if the Trial Court finds that the said sum of Rs.1 lac was not deposited within one week of 3rd July, 2017, the consequences shall follow, the respondent / plaintiff is proceeded against *ex parte* and the counsel for the petitioner / defendant has been heard and the record perused.
6. The respondent / plaintiff instituted the suit from which this petition arises, pleading i) that the petitioner / defendant working in the Municipal Corporation of Delhi (MCD) and living in the neighbourhood of the respondent / plaintiff had approached the respondent / plaintiff for a friendly loan of Rs.8 lacs; ii) that the respondent / plaintiff got one of his fixed deposit receipts (FDR) encashed from the bank and loaned the sum of Rs.8 lacs therefrom to the petitioner / defendant; iii) that the petitioner / defendant assured repayment of the loan amount on or before 12th August, 2014 and issued a cheque dated 12th August, 2014 on account maintained by her with the bank and handed over the same to the respondent / plaintiff; iv) that the said cheque was however returned unpaid with the endorsement of 'insufficiency of funds'; v) that inspite of service of legal notice, neither any reply was given thereto nor the loan repaid; vi) that besides the suit from which this petition arises, a complaint under Section 138 of the Negotiable Instruments Act, 1881 had also been filed.

7. The petitioner / defendant sought leave to defend i) denying that she had taken any such loan of Rs.8 lacs from the respondent / plaintiff; ii) that the cheque in question was signed by the petitioner / defendant for purchasing a washing machine and she was about to give the same to her younger son but before she could handover the same to her younger son, the same was stolen by the son of the petitioner / defendant (who died later) and from whom it was snatched by the respondent / plaintiff; iii) that the respondent / plaintiff is thus not the lawful holder of the said cheque and has forged the cheque; iv) that the respondent / plaintiff is a “Bookie of Cricket Satta” and had induced the deceased son of the petitioner / defendant and had made the deceased son of the petitioner / defendant his debtor and the respondent / plaintiff pressurized the deceased son of the petitioner / defendant as aforesaid; and, v) that due to the blackmailing tactics of the respondent / plaintiff, the said son of the petitioner / defendant had committed suicide.

8. The learned ADJ, in the impugned order, though has correctly found the grounds on which the petitioner / defendant had sought leave to defend to be unreliable inasmuch as the petitioner / defendant had neither made any complaint of the incident for her cheque having been stolen nor stopped the payment of the cheque by intimating the bank about the same but relying on ***Mechelec Engineers & Manufacturers Vs. Basic Equipment Corporation*** AIR 1977 SC 577 granted conditional leave to defend on deposit of 50% of the principal amount claimed in the suit.

9. Not only do I not find any error requiring interference in the impugned order but may observe that the petitioner / defendant is lucky to

have escaped with the conditional grant of leave to defend inasmuch as the judgment on the basis of which leave to defend has been granted is no longer good law as held by the Supreme Court in ***IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd.*** (2017) 1 SCC 568. Applying the ratio in ***IDBI Trusteeship Services Ltd.*** supra, this is a fit case in which leave to defend should have been refused and the suit decreed forthwith.

10. Be that as it may, since the respondent / plaintiff has not chosen to challenge the order, I refrain from following the said course of action.

11. The petition is however dismissed.

12. The petitioner / defendant is granted time till 30th November, 2017 to deposit the balance Rs.3 lacs with the Court in which the suit is pending. If the earlier amount of Rs.1 lac has not been deposited within the time aforesaid or if the balance amount is not deposited by 30th November, 2017, necessary consequences shall follow.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 26, 2017

‘gsr’..