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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ C.R.P. 244/2017 & CM No.40456/2017 (for stay)  
SAURABH SHARMA ..... Petitioner

Through: Ms. Manju Datt, Adv.

Versus

BHAGWAN ..... Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

% **10.11.2017**

1. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order [dated 5<sup>th</sup> September, 2017 in CS No.370/2016 of the Court of Additional District Judge-01 (ADJ), District South-West, Dwarka Courts, Delhi] though granting leave to the petitioner to defend the suit under Order XXXVII of the CPC filed by the respondent / plaintiff for recovery of Rs.6 lacs on the basis of cheques, but subject to the condition of the petitioner / defendant depositing Rs.6 lacs in the form of FDR of a nationalized bank in favour of the District Judge in the Court.

2. The learned ADJ in the impugned order has reasoned that the issuance of the cheques was not disputed by the petitioner / defendant. However, the defence of the petitioner / defendant was that he had taken a loan of Rs.6 lacs from another person and to secure the said loan had handed over the said signed cheques to the said person and though the petitioner / defendant has repaid loan of Rs.4 lacs to the said person but the said person has misused the cheques.

3. The contention of the counsel for the petitioner / defendant is that in view of the specific defence aforesaid of the petitioner / defendant, a case for grant of leave to defend was made out.
4. I have enquired from the counsel for the petitioner / defendant as to what is there to show that the petitioner / defendant had taken a loan from the said third person or had handed over the cheques to the said third person and as to why the cheques were not account payee in the name of the person to whom they were handed over.
5. The counsel for the petitioner / defendant states that all these questions are to be gone into in trial and at this stage leave to defend only is to be granted.
6. I am afraid such interpretation ignores the purport of Order XXXVII of the CPC and would interfere in the efficacy of a cheque as a negotiable instrument.
7. The learned ADJ has rightly concluded that the defence of the petitioner / defendant is farfetched, preposterous and has been raised as an afterthought and the conduct pleaded by the petitioner / defendant was contrary to normal human conduct and behaviour.
8. I may notice that Supreme Court has in ***IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd.*** (2017) 1 SCC 568 overruled ***Mechelec Engineers & Manufacturers Vs. Basic Equipment Corporation*** (1976) 4 SCC 687, which held fray in the field of Order XXXVII for over 40 years, holding the same to be not good law with effect from the coming into force of the 1976 amendment to the CPC.

9. Applying the latest judgment, the petitioner / defendant is lucky to escape with a conditional leave to defend rather than the leave to defend application being dismissed.

10. There is no merit in the petition.

Dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J**

**NOVEMBER 10, 2017**

‘gsr’..