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

+ C.R.P. 175/2015 & CM Nos.26673/2015 & 16962/2016

KRITENDER SHARMA Petitioner
Through Ms.Esha Mazumdar, Mr.Setu Niket
and Mr.Nishant Verma, Advocates

versus

SHASHI KHANNA Respondent
Through Mr.Rajesh Sharma, Advocate
alongwith respondent in person

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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10.01.2017

1. By the present petition filed under section 115 of the Code of Civil Procedure, 1908, the petitioner has sought to challenge the order dated 13.8.2015 of the appellate court whereby the decree passed in favour of the petitioner was set aside and conditional leave subject to deposit of the entire principal amount of Rs.3 lacs was granted to the respondents to defend the suit. The petitioner/plaintiff filed a Summary Suit under Order 37 for recovery of Rs.3 lacs. It was the case of the petitioner that a friendly loan of Rs.3 lacs was given to the respondent and that the respondent has executed receipt, promissory note and a cheque of Rs.3 lacs which is stated to have been dated 5.5.2008. The trial court by order dated 7.1.2012 dismissed the application for leave to defend filed by the respondent and decreed the suit.
2. In appeal the appellate court has noted the submissions of the respondent specially the submissions that in the year 2006 a cheque and documents were handed over to the petitioner as a part of two loan files on

the assurance of providing the respondent a loan of Rs.50,000/-. These documents are said to have been manipulated by the petitioner in 2008. The appellate court concluded that it is apparent from the difference in the ink of the signatures of the appellant and the remaining writing on the cheque and other documents that these documents prima facie have been manipulated. It is also stated that the respondent has filed a criminal complaint against the petitioner which is said to be pending in the court of Metropolitan Magistrate.

3. Based on the above, the appellate court set aside the order of the trial court and granted conditional leave to defend subject to deposit of Rs.3 lacs in the form of an FDR before the trial court.

4. I have heard learned counsel for the parties. Learned counsel for the petitioner has vehemently argued that the documents executed by the respondent who is an educated school teacher would clearly indicate that there was no scope of manipulation and that the appellate court has wrongly set aside the decree passed by the trial court.

5. However, keeping in view the nature of defence raised by the respondents including the fact that the loan is said to have been advanced in cash which has been denied by the respondents, in my opinion, the appellate court has rightly granted conditional leave to defend to the respondent, subject to deposit of a sum of Rs.3 lacs in the form of an FDR.

6. Accordingly, there is no merit in the present petition. Same is dismissed. However, the trial court is requested to expedite the trial of the present case. Neither of the parties should be granted any adjournment on the date the matter is fixed for recording of evidence/arguments. The trial court may also ensure that no unnecessary and frivolous witnesses are

examined in an effort to prolong the trial.

7. None of the observations made while disposing of this petition or by the appellate court or trial court will in any manner prejudice any of the parties at the time of adjudication of the suit.

JAYANT NATH, J

JANUARY 10, 2017

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