

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

+ **RFA No. 525/2018**

% **13th July, 2018.**

RAJESH VERMA Appellant
Through: Mr. Pankaj Kumar, Advocate.

versus

SURAJ PRAKASH SINGHAL Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 27183/2018 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No. 27184/2018 (delay in re-filing)

For the reasons stated in the application, delay in re-filing is
condoned, subject to just exceptions.

CM stands disposed of.

RFA 525/2018 & CM No.27182/2018 (stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant impugning the judgment of the trial court dated 28.11.2017 by which the trial court has dismissed the leave to defend application filed by the appellant/defendant in the Order XXXVII Rule 3(5) CPC and has decreed the suit filed by the respondent/plaintiff for a sum of Rs.4,21,000/- alongwith *pendente lite* and future interest at 6% per annum.

2. The facts of the case are that the respondent/plaintiff filed the subject suit for recovery of the amount of two dishonoured cheques of Rs.1,50,000/- and 1,40,000/- i.e totalling to Rs.2,90,000/-. These cheques were given by the appellant/defendant to the respondent/plaintiff for refund of the loan which was taken by the appellant/defendant from the respondent/plaintiff. When these cheques were presented for collection before the bank, the same were dishonoured with the remarks "Funds Insufficient". After serving a Legal Notice dated 21.4.2016 the subject suit under Order XXXVII CPC was filed.

3. Appellant/defendant filed his leave to defend application and in order to see the complete lack of substance in the affidavit in support of the application for leave to defend because the same raises no triable issues and only contains vexatious and frivolous defences, the said affidavit in support of the leave to defend application filed by the appellant/defendant is reproduced as under:-

“AFFIDAVIT

“I Rajesh Verma aged about 44 yrs S/o Sh. Radha Raman R/o H.No. 146/1, Jammu Mohalla, Band Gali, Maujpur, Delhi-53, do hereby solemnly affirm and declare as under:-

1. That the deponent is the defendant in the above noted case and is well aware about the facts and circumstances of the case and competent to swear the present affidavit.
2. That the suit of the plaintiff is not maintainable under summary procedure as there is no loan agreement, written contract, guarantee, promissory note, enactment, documents, receipt, invoice or bill for any consideration or to discharge any liability between the parties and it is the plaintiff, who misused the process of law. The present suit had been filed by the plaintiff only with to motive to grab the amount of the deponent as well as the defendant.
3. That no cause of action arose for filing the present suit against the deponent.
4. That the deponent never issued alleged cheques bearing No.000094 dated 10.07.14 of Rs.1,50,000/- and bearing Cheque No.000095 dated 31.12.14 of Rs.1,40,000/- in favour of plaintiff, both drawn on Bank of Baroda, Maujpur Branch, Delhi-53.,
5. That the deponent was never under the liability as alleged and has not issued the cheques in question to discharge any liability to plaintiff and hence question of payment of the amount as well as any interest and cost does not arise.

6. That later on the deponent was shocked to know on receiving a notice that the plaintiff misused the relations with the deponent, without any liability and by misusing the undue force and pressure created upon the deponent.

7. That in above said circumstances the plaintiff committed breach of trust and misused the cheques by playing fraud upon the deponent and later on filed false cases to harass, humiliate and blackmail the deponent.

8. That no notice has been served to the deponent as admitted by the plaintiff in his plaint in para No.8 with remarks "Vo Yahan Nahi Milta" and due to which no notice/summons never served to the defendant.

9. That the deponent is only a victim of circumstances due to his innocence and honesty.

10. That the deponent has a good plausible and valid defence and has raised triable issues and hence non granting of unconditional leave to him would cause miscarriage and denial of justice and the deponent would suffer and irreparable loss and injury without any of his fault and liability.

11. The intention of the plaintiff is fraudulent and the present suit is an attempt to over reach the jurisdiction of this Hon'ble Court by practicing fraud and misrepresentation. The plaintiff cannot be permitted to misuse the process of law and for obtaining undue advantage against answering Defendant/deponent. The plaintiff intentionally with malafide intention present suit had been filed.

12. That the deponent is seeking the leave of this Hon'ble court to file certain documents which are relevant for the present case as at this moment its not available and the deponent undertakes to produce the said documents at earliest.

13. That the suit is not maintainable since the plaintiff is guilty of misrepresentation concealment/suppression of material facts and making false statement/claims before this Hon'ble court. Thus, the plaintiff is not entitled to any relief and the present suit is liable to be dismissed on this score alone and entitle the deponent for unconditional leave to defend the suit.

14. That the instant suit is devoid of any merits and raises disputed question of facts and law and such a proper trial is required to adjudicate upon the question raised therein and hence

the application of the deponent for leave to defend in the needs to be allowed unconditional on this ground alone.

15. That the present suit has been filed by the plaintiff with the sole ulterior motive of blackmailing and harassing the deponent to extort money, by wrongly and malafidely implicating the deponent, who has bonafide, good sufficient and reasonable defence to the suit of the plaintiff. The present application raises serious triable issues, both on fact and law, which need determination by this Hon'ble court.

16. That the facts stated in the accompanying affidavit are true and correct and the same have been drafted by my counsel under my instructions, which have been read over and explained to me in vernacular and the same are correct.”

4. It is seen that the appellant/defendant in para 4 has completely denied issuing of cheques in favour of the respondent/plaintiff. Appellant/defendant has then in para 5 stated that appellant/defendant was never under any liability to the respondent/plaintiff. In para 6 it is pleaded that respondent/plaintiff has misused the relations with the appellant/defendant and without any liability by misusing (the cheques) and undue force and pressure created upon the appellant/defendant. It is therefore seen that except making general denial of the facts of the case in the plaint, there is no denial that the subject cheques do not bear the signatures of the appellant/defendant and there is no explanation given as to how the subject cheques came into possession of the respondent/plaintiff.

5. Learned counsel for the appellant/defendant argued that appellant/defendant had repaid the amount of the loan to the respondent/plaintiff, however, no such defence is found in the leave to defend application, and in fact this defence if allowed to be raised would amount to complete contradiction with the existing averments in the leave to defend application and as per which allegedly there was no liability of the appellant/defendant towards the respondent/plaintiff i.e there was no loan liability of the appellant/defendant to the respondent/plaintiff. This argument of the appellant/defendant is therefore rejected.

7. Supreme Court in the recent judgment in the case of ***IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd., (2017) 1 SCC 568*** has laid down the principles for grant of leave to defend and these principles are as under:-

"17. Accordingly, the principles stated in paragraph 8 of *Mechelec's* case will now stand superseded, given the amendment of Order XXXVII Rule 3, and the binding decision of four judges in *Milkhiram's* case, as follows:

17.1. If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the Plaintiff is not entitled to leave to sign judgment, and the Defendant is entitled to unconditional leave to defend the suit.

17.2 If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the Plaintiff is not entitled to sign judgment, and the Defendant is *ordinarily* entitled to unconditional leave to defend.

17.3 Even if the Defendant raises triable issues, if a doubt is left with the trial judge about the Defendant's good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4 If the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5 If the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the Plaintiff is entitled to judgment forthwith.

17.6 If any part of the amount claimed by the Plaintiff is admitted by the Defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the Defendant in court."

8. The ratio of the judgment of the Supreme Court in ***IDBI Trusteeship*** case (*supra*) clearly states that once the defence is clearly frivolous and vexatious and there is no triable issue, leave to defend should be not be granted. In the facts of the present case I have already reproduced above generalized, vague and false averments

made in the affidavit in support of the application for leave to defend as also totally new and contradictory defence raised before this Court, and therefore, in my opinion the trial court has committed no illegality in dismissing the application for leave to defend by making the following observations:-

“7. In the present application it has not been clarified by the defendant as to how the cheques in question came in possession of the plaintiff if there was no transaction between the plaintiff and defendant. Defendant has not given particulars of the documents which he wants to place on record and which are not available with him at the moment. Defendant has stated in his leave to defence application that he has not issued the cheques in question to discharge any liability to plaintiff and on the other hand defendant has made contrary averment that the plaintiff has committed breach of trust and misused the cheques by playing fraud upon the defendant and later on filed false cases to harass, humiliate and blackmail the defendant.

It is noteworthy that in the application for leave to defend there is no reference to any criminal complaint having been filed by the defendant against the plaintiff. Defendant has not filed any complaint/FIR against the plaintiff that he has fraudulently misused the cheques. There is clearly no merit in the submissions of the defendant.”

9. Counsel for the appellant/defendant is however justified in arguing that out of the total sum claimed and decreed of Rs.4,21,000/- this amount contains an amount of Rs.45,800/- towards legal notice and fees as stated in para 13 of the plaint, and which is not covered under Order XXXVII CPC, and therefore, the impugned judgment is modified that the decree against the appellant/defendant will be for a sum of Rs.4,21,000/- minus Rs.45,800/-.

10. In view of the above, I do not find any merit in the appeal. Dismissed except to the extent of reducing the money decree to an amount of Rs.4,21,000/- minus Rs.45,800/-.

JULY 13, 2018/ib

VALMIKI J. MEHTA, J

