

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

+ **RFA No.512/2018**

% **9th July, 2018**

SUMER CHAND

..... Appellant

Through: Mr. Jatin Mongia, Advocate
with Mr. Animesh Kumar,
Advocate.

versus

SHAKUNTALA BAGRI

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.26579/2018(exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.26580/2018 (for condonation of delay)

2. For the reasons stated in the application, delay of 10 days
in filing the appeal is condoned.

C.M. stands disposed of.

RFA No.512/2018 and C.M. No.2658/2018(for Stay)

3. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908(CPC) is filed by the defendant in the suit impugning the judgment of the Trial Court dated 24.1.2018 by which trial court has dismissed the leave to defend application and decreed the suit filed on the basis of the three dishonoured cheques totalling to a sum of Rs.7,50,000/- along with interest.

4. The principles with respect to grant of leave to defend have been stated by the Supreme Court in its recent judgment in the case of ***IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd., (2017) 1 SCC 568***. The relevant paras of this judgment are paras 17 to 17.6 and these paras read 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 Accordingly, the principles stated in paragraph 8 of *Mechelec's* case will now stand superseded, given the amendment of Order XXXVII Rule 3, and the binding decision of four judges in *Milkhiram's* case, as follows: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."

5. The aforesaid paras show that leave to defend can only be granted if the defence is not frivolous or vexatious and the defence raises a triable issue. Let us apply the aforesaid legal position to the facts of the present case.

6. The facts of the present case are that the respondent/plaintiff filed the subject suit for recovery of loan granted of a sum of Rs.7.50 lacs to the appellant/defendant. The loan was granted on 20.1.2014 and in addition to the issuing of the subject three cheques which have been dishonoured, the respondent/plaintiff pleaded that the appellant/defendant had also executed a document dated 20.1.2014 acknowledging the factum of payment of loan and also of handing over of the subject three cheques. Trial court has

observed that the appellant/defendant has in the leave to defend application not specifically denied that he did not execute the document dated 20.1.2014. I have gone through the leave to defend application and the supporting affidavit and I find that there is no specific averment by the appellant/defendant that he never executed the document dated 20.1.2014 or that this document dated 20.1.2014 is a forged and fabricated document. This document dated 20.1.2014 shows that the appellant/defendant admits that he had taken a loan of Rs.7,50,000/- and which was secured by three cheques. Therefore in my opinion in the facts of the present case so far as the grant of loan of Rs.7,50,000/- by the respondent/plaintiff to the appellant/defendant would not raise any triable issue.

7. There is also the fact that loan in question was secured by the subject three cheques totalling to Rs.7,50,000/-. The appellant/defendant had contended that the cheques were given as security because of the running of chits/committees by the respondent/plaintiff, but the appellant/defendant has failed to explain that if the cheques were given only as security and ,if no amount was taken by the appellant/defendant from the respondent/plaintiff or if the

amount was taken and was returned by the appellant/defendant, then why the cheques allegedly given as security continued to remain with the respondent/plaintiff and were not taken back by the appellant/defendant. Clearly therefore this defence was also not a *bonafide* triable issue.

8. Though counsel for the appellant/defendant has sought to argue that the loan agreement dated 20.1.2014 should not be looked into by this Court because the document filed is only a photocopy filed by the respondent/plaintiff, however, this argument is misconceived because as stated above there is no denial by the appellant/defendant in the leave to defend application with supporting affidavit that such a document was never executed by the appellant/defendant or that this document dated 20.1.2014 is a forged and fabricated document.

9. There is no merit in the appeal. Dismissed.

JULY 09, 2018/NE

VALMIKI J. MEHTA, J