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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 137/2018 and CM No.27225/2018, 27226/2018 & 27227/2018

ARTI

..... Petitioner

Through: Mr.Rakesh Kumar Garg, Advocate

versus

SHIV KUMAR GUPTA

..... Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

O R D E R

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13.07.2018

CM No. 27226/2018 (Exemption)

Exemption allowed, subject to just exceptions.

C.R.P. 137/2018 CM No. 27227/2018 (for condonation of delay)
and CM No.27225/2018

This is an application filed under Section 5 of the Limitation Act, 1963 seeking condonation of 55 days' delay in filing the petition.

At the outset, it is observed that vide the present petition the petitioner assails the impugned order dated 8.2.2018 of the learned Additional District Judge-03, Dwarka Courts in CS No.15815/16 whereby an application under Order XXXVII Rule 3 (5) CPC filed by the defendant, i.e., the respondent to the present petition, was allowed with permission granted to file the written statement. It has been submitted on behalf of the applicant/petitioner that the petitioner had filed a summary suit for recovery adverting to a mutual agreement dated 11.4.2015 and handed over a sum of Rs.4,50,000/- in cash to

the defendant on 14.1.2014 who was known to the petitioner for several years and had approached the petitioner for a loan for raising construction over property No.A-362, Gali No. 11, Mahavir Enclave-II, New Delhi and that the defendant, i.e., the respondent to the present petition, had assured to return the money within a period of six months.

Vide the application under Order XXXVII Rule 3(5) CPC that the defendant had filed *inter alia* reliance was placed in relation to a complaint dated 27.3.2015 bearing DD No.35B, Police Station Dabri and an FIR 400/15 dated 27.3.2015 under Sections 323/351/354/506/509 of the Indian Penal Code, 1860 registered against the plaintiff's husband alleging that the defendant's signatures were forcibly taken on blank papers and a complaint dated 14.8.2015 bearing DD No. 29B in relation thereto was lodged and also referred to the complaint bearing DD No.35 B and FIR 400/15, Police Station Dabri.

Vide the impugned order, the learned Trial Court placing reliance on the verdict of the Hon'ble Supreme Court in ***V.K.Enterprises v. M/s. Shiva Steels***; AIR (2010) Supreme Court 2885 with observations to the effect:

“Order XXXVII C.P.C. has been included in the Code of Civil Procedure in order to allow a person, who has a clear and undisputed claim in respect of any monetary dues, to recover the dues quickly by a summary procedure instead of taking the long route of a regular suit. The Courts have consistently held that if the affidavit filed by the defendant discloses a triable issue that is at least plausible, leave should be granted, but

when the defence raised appears to be moonshine and sham, unconditional leave to defend cannot be granted. What is required to be examined for grant of leave is whether the defence taken in the application under Order XXXVII Rule 3 C.P.C. makes out a case, which if established, would be a plausible defence in a regular suit.”

allowed the prayer made by the defendant seeking grant of leave to defend.

On behalf of the petitioner it has been submitted by the learned counsel for the petitioner that the complaints have been made by the defendant much later than the date when the mutual agreement was executed and have been made five months later and further more it has been submitted on behalf of the petitioner that the averments in the complaint made vide DD No.29B to Police Station Dabri on 14.8.2015 at 10:15 a.m. are to the effect that the defendant had been made to sign that he had been given a sum of Rs.4,50,000/- in the presence of one Ram Singh and Vakil and in the presence of one Gujjar, but he had not been given any money in front of them and that thus it was implicit that the said amount had been paid for there was no specific denial qua the receipt of the sum of Rs.4,50,000/-.

Without any observations on the merits or demerits of the submission that have been made which would be the subject matter of trial and evidence that may be led by either side, it is essential to observe that the petitioner has placed reliance on the document, i.e. mutual agreement on the basis of which it has been stated that a sum of Rs.4,50,000/- has been paid which is stated to have been placed on record and which indicates ***that it is an attested document attested by***

a Notary without even date of such attestation.

In the circumstances, the claim made by the applicant/defendant seeking leave to defend has appropriately been allowed by the learned Trial Court and the petition and the accompanying applications CM No.27227/2018 seeking condonation of delay and CM No. 27225/2018 are thus declined.

Nothing stated herein above shall however amount to an expression on the merits of the case.

A copy of this order be sent the learned Trial Court.

ANU MALHOTRA, J

JULY 13, 2018/sv