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

\+ **RFA No. 630/2018 & CMs 31285/2018 (Stay) & 31286/2018 (Exemption)**

% 6th August, 2018

MANGE RAM ..... Appellant

Through: Mr. Yudhvir Singh Chauhan, Advocate.
Appellant in person.

versus

RAJ KUMAR YADAV ..... Respondent

Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. A more or less identical issue between the same parties has been decided by this Court in terms of the judgment passed in RFA 623/2018 on 3.8.2018. The only difference in the present case would be with respect to the difference of the cheque numbers and amount. Therefore, adopting the ratio of the judgment dated 3.8.2018 in RFA 623/2018, this appeal is also dismissed.

2. The judgment dated 3.8.2018 passed in RFA 623/2018 reads as under:-

> **<u>"CM No. 30905/2018 (Exemption)</u>**
>
> Exemption allowed subject to just exceptions.
>
> CM stands disposed of.
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> **<u>RFA No.623/2018 & CM No. 30904/2018 (stay)</u>**
>
> 1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the Judgment of the Trial Court dated 7.6.2018 by which the trial court has dismissed the leave to defend application filed by the appellant/defendant and decreed the suit for a sum of Rs.4,50,000/- along with interest, on account of two cheques given by the appellant/defendant to the respondent/plaintiff having been dishonoured.
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> 2. The facts of the case are that the respondent/plaintiff filed the subject suit pleading that he gave a loan of Rs. 20 lacs to the appellant/defendant who had asked for financial help. The appellant/defendant promised to repay the same within one year but failed to repay the amount. In part payment the appellant/defendant issued two cheques dated 3.9.2016 for Rs.2,00,000/- and Rs.2,50,000/- drawn on Union Bank of India, Paschim Vihar, Delhi, however both these cheques on presentation were dishonoured with the remarks "Funds Insufficient". Therefore, after serving the Legal Notice dated 26.9.2016, the present suit was filed.
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> 3. Appellant/defendant filed his leave to defend application and the basic defence was that the cheques which were presented by the respondent/plaintiff were those cheques which were stolen from the appellant/defendant when the appellant/defendant was robbed while driving his car on 16.4.2015 in Haryana. If I can say so, the story put forth by the appellant/defendant is worth consideration of by a movie director, and therefore, I would like to reproduce the story which is put forth by the appellant/defendant in his own words as stated in the leave to defend application with respect to the theft of the cheques, and this para 9 of the application for leave to defend reads as under:-

> "9. That the cheques annexed with the plaint was blank only signature were mentioned over the cheques and the plaintiff has misuse the same as the alleged cheques along with other cheques were already robbed from the defendant by some unknown persons on 16-04-15 when the defendant was coming to Delhi from Rohtak, vie Kharkhoda, Haryana, during the said journey when the defendant crossed the Kharkhoda River and reached around 2 km ahead from the river. Suddenly One car came from the behind and crossed the defendant and stops the car ahead to me and stopped the defendant car. Three person step out from the said car and upon the gun point they had robed the defendant and snatched around Rs.1,55,000/-, mobile phone, and some cheques i.e.044462/70/71/76/77/78/79/80 and 008461/62/63/64/68 & 74 dawn on Union Bank of India, Prashant Vihar, Delhi and another cheque 103674 and other cheque drawn on OBC, Prashant Vihar, Delhi those cheques were already signed by me and rest of content of cheque were blank from me and went away. Thereafter the defendant went to the Police Station Kharkhoda where the defendant given a written complaint to the police regarding the above said incident. The police have lodged the FIR no.162/15 over the defendant complaint. The police has arrested one Davender Kumar, S/o Sh. Raj Kumar, R/o Gautam Colony, Narela, Delhi and recovered the mobile phone of defendant and one Wagon R, Car bearing no. DL 6CN 4966 from him."

4. Trial court has held the defence of the appellant/defendant to be completely frivolous and vexatious because no doubt an FIR was filed by the appellant/defendant with respect to his being robbed on 16.4.2015, but in the FIR there is no mention of any cheques having been stolen from the appellant/defendant on 16.4.2015. Obviously therefore the appellant/defendant is using the fact that he was robbed on his journey from Delhi to Rohtak on 16.4.2015 as a basis to create a completely false defence to the suit. It is also required to be noted that in the application for leave to defend there is no averment by the appellant/defendant that he is a complete stranger to the respondent/plaintiff, and which would have been if stolen cheques were presented by a stranger.

5. The principles with respect to grant or denial of the leave to defend have been recently crystallized in the judgment of the Supreme Court in the case of ***IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd., (2017) 1 SCC 568*** and these principles 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:
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> 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.
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> 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.
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> 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.
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> 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.
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> 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.
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> 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."

6. 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. The present is a one such case where the trial court has completely disbelieved the story put forth by the appellant/defendant of his cheques being stolen, and I completely agree with the reasoning and conclusions of the trial court for dismissing the leave to defend application as the defence is completely frivolous, vexatious and raises no triable issue.

7. At this stage, I would like to note that whenever a cheque is dishonoured statutorily interest at the rate of 18% per annum simple is provided as per Section 80 of the Negotiable Instruments Act,1881. Appellant in fact is more than lucky because trial court instead of awarding interest at 18% per annum simple has only awarded interest at 9% per annum simple. Appellant/defendant has already therefore got a benefit which he did not statutorily deserve.

8. In view of the aforesaid discussion, there is no merit in the appeal. Dismissed."

3. This appeal is also therefore dismissed.

VALMIKI J. MEHTA, J

AUGUST 06, 2018/ib