$~5(Special Bench)

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

Date of decision : 19th July, 2018

\+ **RFA 239/2017 & CM APPL.8113/2017**

RAMESH AHUJA & ANR ..... Appellants
Through: Mr. Love Kumar & Ms. Divya Sharma, Advocates (M-9811137917).

versus

RITU BABBAR ..... Respondent
Through: Mr. Atul Kumar, Advocate. (M-7678588940)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present appeals are against the impugned order dated 29th September, 2016 and judgment dated 17th November, 2016, by which, initially conditional leave was granted and upon the non-compliance of the condition, the suit of the Plaintiff was decreed. Order dated 29th September 2016, passed by the Trial Court by which conditional leave was granted to the Appellant/Defendant (*hereinafter referred to as Defendant*) in the following terms: -

> *"18.In the circumstances, it would be appropriate to grant leave to defend to the defendants, but in order to secure the interest of the plaintiff, said leave would be conditional i.e. subject to deposit of a sum of Rs.1,00,000/- in the form of FDR or in alternative bank guarantee to be furnished within four weeks in the name of Ld. District &Sessions Judge (HQs), initially for a period of one year, may be extendable, as the case may be."*

2. Briefly stated, the Respondents/Plaintiffs (*hereinafter Plaintiff*) filed the present suit for recovery of a sum of Rs.5,00,000/- (Rupees Five Lakhs) against the Defendant. It is the case of the Plaintiff that that amount of Rs.5,00,000/- (Rupees Five Lakhs) was extended as a friendly loan. However, the Defendant failed to repay the said loan despite repeated demands and finally a post dated cheque was issued by the Defendant dated 30th December 2014 for Rs.5,00,000/- (Rupees Five Lakhs) each. The cheque was presented by the Plaintiff but the same was returned as the Defendant had closed the bank accounts. The Plaintiff had also preferred a complaint under Section 138 of the Negotiable Instruments Act which is still stated to be pending. In the meantime, the Plaintiff learnt that the Defendant is likely to dispose of immovable property as described in paragraph 14 because of which the present suit under Order 37 was filed.

3. The Defendant filed an application for leave to defend on various grounds including the ground that the suit raises triable issues and he is, therefore, entitled to unconditional leave to defend. The said leave to defend application came to be disposed of by the order dated 29th September 2016 by which conditional leave was granted as extracted above. The Defendant failed to comply with the conditions imposed by the Court which thereafter led to the decree being passed in favour of the Plaintiff vide judgment dated 17th November, 2016.

4. The present RFA was listed on 28th February, 2017 on which date, this Court directed that the operation of the impugned judgment and decree shall remain stayed subject to the Defendant depositing a sum of Rs.1,00,000/- (Rupees One Lakh). The said amount was directed to be

retained in an FDR. It has been reported that the said deposit has been made by the Defendant and the amount is lying in an FDR.

5. On 24th April, 2018, an apprehension was expressed on behalf of the Plaintiff that since the immovable property of the Defendant has been sold and there is no other security to safeguard the interest of the Plaintiff. The Defendant should be directed to furnish some other immovable property. The matter was adjourned on a couple of occasions and now the Defendant has produced a sale deed dated 16th May, 2018 registered on 7th June, 2018 by which the Defendants have, purchased in the name of their children, property bearing number No.SF-02, Second Floor, area measuring 65 square yards out of Khasra No.485 situated within extended Abadi Lal Dora of village Burari, Delhi-110084. The Defendants are willing to offer the said property as security. The Plaintiff, however, submits that as per clause 18 of the sale deed relating to the said property, it is clear that Defendants have availed of financial facility from GIC Housing Finance Company Ltd. who therefore has the first charge of the property and the property has already been mortgaged to them.

6. This Court, at this stage, is not securing the Plaintiff towards the entire amount claimed in the suit but is also concerned with safeguarding the interest of the Plaintiff with some form of security so that if the suit is decided in favour of the Plaintiff, there would be some property available.

7. Considering the objections raised by the Plaintiff, the Defendants are directed not to dispose of this property without the leave of this Court. The Defendant shall also inform the Court if GIC Housing Finance Company Ltd. files any proceedings in respect of the suit property.

8. The amount lying deposited in this Court shall be subject to the final

decision of the Trial Court. The FDR which is lying with the Registrar General shall be kept in an automatic renewal mode.

9. The vendees of this property namely, Divya Ahuja and Mandhir Ahuja are present in this Court. They are the children of Mr. Ramesh Ahuja. They undertake to abide by the order as recorded above. They have been apprised of the order passed by this Court.

10. The appeal is disposed of. The suits are restored to the position prior to the passing of the judgement and decree dated 17th November 2016. The said judgement dated 17th November 2016 is set aside, as the condition for grant of leave has been complied with. The suit will proceed from the stage of grant of conditional leave.

11. Parties to appear before the Trial Court on 9th August, 2018.

PRATHIBA M. SINGH, J.

JULY 19, 2018
Rekha