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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 87/2019**

GAGAN JINDAL Petitioner
Through: Mr.Vipul Srivastav and Mr.S.S.
Sastry, Advocates

versus

KAMAL RANA Respondent
Through: Mr.Kamal Mehta and Mr.B.S.Tiwary,
Advocates

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **21.01.2019**
CM No. 2737/2019 (Exemption)

Exemption allowed, subject to just exceptions.

CM(M) 87/2019 and CM No. 2736/2019

Vide the present petition, the petitioner assails the impugned order dated 29.10.2018 of the Court of the learned Additional District Judge (North-West) in CS N. 579242/2016 vide which the application filed by the defendant, i.e., the petitioner herein, seeking leave to defend was allowed conditionally that the defendant, i.e., the petitioner herein, having been granted leave to defend the said suit, subject to furnishing of an FDR in the name of the defendant, issued by any nationalized bank in the sum of Rs.42,30,000/- for a period of one year with facility of automatic renewal for the same period or furnishing the bank guarantee in the said amount, within a period of 30 days from the date of the order dated 29.10.2018. It was also

clarified by the said order that the defendant, i.e., the petitioner herein would not be entitled for any loan or advance against the said FDR.

It has been submitted on behalf of the petitioner that the impugned order itself reflects that the learned Trial Court has taken into account the triable issues that arose and that the defendant i.e. the petitioner herein had contended through the leave to defend application itself that there had been forging and fabrication of the contents of the cheque in question.

The said suit before the learned Trial court under Order XXXVII CPC is in relation to cheque bearing No. 000007 dated 15.1.2016 for a sum of Rs.42,30,000/- as issued by the petitioner himself which factum is admitted by the petitioner. It has been submitted through the averments made in the plaint that as per the telephonic instructions received from the defendant i.e. the petitioner herein, the date was mentioned in the cheque as being 15.1.2016.

It has been submitted on behalf of the petitioner that is the defendant herein that the said date was inserted on fabrication erroneously without any instructions. In reply to a specific Court query, learned counsel for the petitioner has submitted that the factum that the petitioner herein submits that the contents of the cheque have been fabricated and forged would suffice to bring forth the contention of the petitioner herein, i.e. the defendant to the suit that the said date i.e., 15.1.2016 had been incorporated without any such telephonic consent of the defendant. It is essential to observe that the said aspect of the specific denial in relation to the date 15.1.2016 having been brought onto the cheque without the consent of the defendant has not

been made through the application seeking leave to defend by the defendant and the said aspect cannot be ignored.

On behalf of the respondent reliance is also placed on the contents of the application filed by the defendant i.e., the petitioner herein, seeking leave to defend contending vide paragraph 'J' to the effect that the issuance of the alleged cheque was a triable issue and the defendant who is specifically denying the issuance of the said cheque and, the contents of subsequent contentions in another paragraph j(v) of the said leave to defend application, categorically admit the handing of the cheque in question to the plaintiff. i.e., the respondent herein, by the petitioner though the petitioner herein, i.e., the defendant, has sought to submit that that were certain circumstances under which the said cheque was handed over in the form of a blank cheque upon faith and trust on the plaintiff.

Whereas reliance is placed on behalf of the plaintiff i.e., the respondent herein, on the verdict of the Supreme Court in **Neebha Kapoor Vs. Jayantilal Khandwala & Ors.**; a verdict dated 22.1.2008 in Appeal (Civil) No. 573/2008, wherein there is a reference made on the verdict of the Supreme Court in M/s ***Mechelec Engineers & Manufacturers V. M/s Basic Equipment Corporation*** [(1976) 4 SCC 687] to contend that where the defendant has been able to satisfy the Court that there was a good defence to the claim on its merits the plaintiff is not entitled to leave to sign the judgment and the defendant is entitled to unconditional leave to defend, on behalf of the respondent i.e. the plaintiff of the said suit, reliance is placed on the verdict of this Court in ***Vijender Singh Vs. Eicher Motors Limited***

and Anr. ; 2011 LawSuit (Del) 2099 with reference to the observations in paragraph 8 of the said verdict which reads to the effect:

“8. Learned counsel for the petitioner has next contended that the blank cheques had been given which have been filled up by the respondent no. 1 and attracts no legal consequences having been tempered with. This argument has to be rejected out rightly as there is no law that a person drawing the cheque has to necessarily fill it up in his own handwriting. Petitioner has not denied his signatures on the cheques. Once he has admitted his signatures on the cheque he cannot escape his liability on the ground that the same has not been filled in by him. When a blank cheque is signed and handed over, it means that the person signing it has given implied authority to the holder of the cheque, to fill up the blank which he has left. A person issuing a blank cheque is supposed to understand the consequences of doing so. He cannot escape his liability only on the ground that blank cheques had been issued.”

to contend that where the blank signed cheque is handed over it means that the person signing it has given an implied authority to the holder of the cheque to fill up the blank which he has left and that the person issuing a blank cheque is supposed to understand the consequences of doing so and cannot escape his liability only on the ground that a blank cheque had been issued.

Inter alia, it was contended on behalf of the respondent during the course of the submissions made that the learned Trial Court has taken an equitable view of the matter and balanced the contentions raised by the petitioner herein and those of the respondent in granting the leave to defend conditionally as directed vide the impugned order

and the factum that the amount directed to be deposited has been directed to be deposited only in the name of the defendant, i.e., the petitioner herein, also cannot be overlooked.

On a consideration of the rival submissions, the averments made to the leave to defend, the absence of the categorical denial in relation to date of the cheque having been brought forth on record on the cheque in question admittedly signed by the petitioner without the consent of the petitioner having as already observed herein not been specifically denied, in the circumstances of the case, it is held that there is no infirmity in the impugned order and the petition and the accompanying application are thus declined.

ANU MALHOTRA, J

JANUARY 21, 2019/sv