

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

+ **RFA No. 79/2019**

% **30th January, 2019**

PRADEEP KUMAR SHUKLA Appellant

Through: Mr. C.S.Bhandari, Adv. (8860346364)

versus

UMESH CHAND NIMIA @ BABLI NIMIA Respondent

Through: Mr. Ankit Mehta, Adv. (9971135126)

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

Caveat No. 90/2019

1. Counsel appears for the caveator. Caveat accordingly stands discharged.

CM No. 4385/2019 (Exemption)

2. Exemption allowed subject to just exceptions.

CM stands disposed of.

RFA No. 79/2019 & CM No. 4384/2019 (stay)

3. 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 15.11.2018 by which the trial court has dismissed the Leave to Defend Application filed by the appellant/defendant under Order XXXVII Rule 3(5) CPC and has decreed the suit filed by the respondent/plaintiff for a sum of Rs. 7,00,000/- with interest at 9% per annum. The suit has been decreed on account of a loan of Rs. 6,00,000/- granted by the respondent/plaintiff to the appellant/defendant which has not been repaid, and the cheque which was given for repayment of the said loan amount plus the interest has thereafter returned from the bank dishonoured.

4. The facts of the case are that the respondent/plaintiff pleaded in the plaint that the appellant/defendant being known to the respondent/plaintiff had approached the respondent/plaintiff for a loan and on 01.05.2014 the respondent/plaintiff had advanced a friendly loan of Rs. 6,00,000/- for a period of six months with interest at Rs. 10,000/- per month. It was pleaded that the appellant/defendant executed an Agreement/Pro-Note on a Stamp Paper of Rs. 20/- on 20.05.2014 with respect to the loan amount of Rs. 6,00,000/- granted on 01.05.2014. It was further pleaded that neither the principal nor the

interest amount was paid despite repeated requests, and ultimately the appellant/defendant issued a cheque of Rs. 7,00,000/- bearing No. 000054 dated 01.11.2015 drawn on Bank of Baroda, Jheel Branch, Delhi-110051 being towards the amount of Rs. 6,00,000/- towards principal and Rs. 1,00,000/- for interest as full and final settlement, but this cheque was dishonoured on presentation vide Written Memo dated 02.11.2015. Respondent/plaintiff served appellant/plaintiff with a Legal Notice dated 02.01.2016 and also instituted proceedings under Section 138 of the Negotiable Instrument Act, 1881 and since the loan plus interest was not repaid, the subject suit was filed under Order XXXVII CPC.

5. The appellant/defendant filed his leave to defend application. In the leave to defend application it is not disputed that the appellant/defendant did sign the Agreement-cum-Pro-Note on a stamp paper of Rs. 20 on 20.05.2014 but it is pleaded that this document was blank when they were signed by the appellant/defendant. It is also pleaded by the appellant/defendant that he did not take a loan of Rs. 7,00,000/- but only took a loan of Rs.70,000/- which was repaid. So far as the dishonoured cheque is

concerned, the appellant/defendant contended that this cheque was given originally at the time of grant of loan in blank to the respondent/plaintiff and the respondent/plaintiff has misused this cheque even after the loan of Rs. 70,000/- had been repaid, and with the cheque figure being wrongly stated as Rs. 7,00,000/- instead of the loan of Rs.70,000/- which was granted by the respondent/plaintiff to the appellant/defendant for taking the alleged loan of Rs. 70,000/-.

6. The trial court has dismissed the Leave to Defend application of the appellant/defendant stating that the appellant/defendant does not dispute his signatures on the Agreement dated 20.05.2014. The trial court also notes that the appellant/defendant does not dispute that the dishonoured cheque was of the bank of the appellant/defendant and was indeed dishonoured. The trial court has further held that if the loan was of Rs. 70,000/- and which was repaid, the appellant/defendant ought to have filed some documents to show repayment of loan but the appellant/defendant failed to file any such document. The trial court has finally held that it was very strange that in case the loan was repaid, then the appellant/defendant did not ask the respondent/plaintiff for the return

of the documents and the blank cheque which were given by the appellant/defendant to the respondent/plaintiff for taking the alleged loan of Rs. 70,000/-.

7. The principles with respect to grant of leave to defend, have been recently crystallized by the Hon'ble Supreme Court in the judgment in the case of ***IDBI Trusteeship Services Ltd. v. Hubtown Ltd., (2017) 1 SCC 568***, and the relevant paras of this judgment 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."

8. A reading of the ratio of the judgment of ***IDBI Trusteeship Services Ltd. (supra)*** shows that if the defence is frivolous or vexatious and there is no bonafide triable issue, then in such a case the leave to defend ought to be refused. In my opinion clearly the defence raised by the appellant/defendant was rightly held by the trial court to be frivolous and vexatious not raising a bonafide triable issue, and the reasons for the same have already been stated above in para 6 which are repeated herein. In addition to the reasons given by the trial court, in exercise of powers under Order XLI Rule 24 CPC for giving additional reasons, this court observes that if it is found that in case the dishonoured cheque of Rs. 7,00,000/- was not

given on 01.11.2015 as was argued by the appellant/defendant, but was given originally in May 2014, then there was no difficulty in the appellant/defendant filing counter foils of his cheque book, and which would have shown with the serial number of the cheque was of May, 2014 vintage and not of November, 2015 vintage. But deliberately the appellant/defendant has not filed counter foils of his cheque book, either before the trial court or even in this court, inasmuch as if the counter foils would have been filed the story put forth by the appellant/defendant would have been found to be false as the counter foils would have shown the subject cheque being issued in November, 2015 and not in May, 2014.

9. In view of the aforesaid discussion, there is no merit in the appeal. Dismissed. All Pending applications are disposed of.

JANUARY 30 , 2019/ib

VALMIKI J. MEHTA, J