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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA 240/2019
HARISH SHARMA

..... Appellant
Through: Mr.Amit Sinha, Mr.Akhilesh Tej Pal
and Mr.Rohit Kumar, Advs.

versus

BHARTI SAHNI

..... Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER
% **15.10.2019**

This appeal is against the impugned judgment/decreed dated 28.01.2019 passed in civil suit No.992/2017 by learned Additional District Judge, Delhi whereby leave to defend application filed by the appellant herein in a suit for recovery of Rs.5,05,500/- under Order 37 CPC was dismissed.

The defence raised by the appellant before the learned trial court was he was a member of a committee being run by the respondent herein and despite he had made the entire payment due, two cheques which he had initially given to the respondent as *security* were later misused by the respondent. It was also argued out of the two cheques, one cheque of Rs.2 lacs was never used by the appellant, hence suit under Order 37 was not maintainable.

A perusal of the plaint would rather reveal the cheques bearing

No.618344 and 618345, both dated 11.08.2017, for Rs.3 lacs and Rs.2 lacs respectively in favour of the plaintiff were presented and one of such cheques bearing No.618344 was dishonoured with remarks 'insufficient funds' and second was returned vide returning memo dated 22.09.2017. Hence both the cheques were presented for encashment. Admittedly none was encashed.

It is also pertinent to mention a legal notice dated 17.10.2017 with similar averments was served upon the appellant, to which a reply dated 31.10.2017 thereof was also sent by the appellant herein. A perusal of the reply dated 31.10.2017 would reveal the plea that the cheques which now the appellant claims to have been given as security to the respondent was never alleged. The learned trial court while considering the facts came to a conclusion the defence raised by the appellant herein was sham and hence dismissed the leave to defend application on following grounds:

8. The only defence taken by the defendant is that the alleged cheques were issued towards the committee which was being run by the plaintiff and he was assured by the plaintiff that she had destroyed the said cheques. The defence taken by the defendant appears to be sham defence as the plaintiff, before filing of the present suit, had issued a notice dated 17.10.2017 to the defendant asking him to return the loan amount and the said notice was duly replied by the defendant vide reply dated 31.10.2017, but no such story of committee as made by the defendant in the application under reference, has been stated by the defendant in his reply dated 31.10.2017 which was the first opportunity for the defendant to have put forth his defence. It is also not understood as to why the defendant did not notify his bank in regard to those cheques and as to why he did not instruct the bank to refer the cheques to him/drawer as and when presented for encashment. The defendant has also failed to give details of committee business of the plaintiff. All the contentions in this regard are vague. Therefore, the defence raised by the defendant is moonshine and ashamed.

9. Accordingly, in view of my above discussions, the defence set up by the defendant in the present case is illusory and sham and hence, the defendant is not entitled to leave to defend. The application under Order XXXVII Sub Rule 5 of 3 CPC seeking leave to defend the suit, therefore, stands dismissed and thus, I pass a decree for a sum of Rs. 5,05,500/- in favour of the plaintiff and against the defendant along with costs. The plaintiff shall also be entitled to recover pendente lite & future interest, however, @ 9% p.a. from the date of filing of the present suit till realization of the decretal amount.

The same averments are raised before me. Considering the entire gamut of facts, I find no illegality in the impugned judgment passed, therefore the appeal is dismissed. No order as to costs.

YOGESH KHANNA, J.

OCTOBER 15, 2019

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