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

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Delivered on: 28th November, 2019

+ **RFA 539/2018 & CM APPL No.27513/2018**

K C SHARMA (SINCE DECEASED) THR LRS Appellants
Through: Mr.S.K.Sahijpal and Ms.Yashika
Yadav, Advs.

versus

HIMANSHU SIKKA & ANR Respondents
Through: Mir Akhtar Hussain, Adv.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This appeal challenges the judgment and decree dated 28.02.2018 passed by ADJ-03, Rohini Courts, Delhi in CS No.15/2015 whereby suit under Order 37 CPC filed by the respondent for recovery of ₹ 8,72,123/- was decreed in favour of respondent and against the appellant herein.

2. The suit was filed on the premise the appellant and his son-in-law were partners in a partnership firm dealing in wholesale and retail business in paper and paper products in the name and style of M/s Balaji Paper mart and have placed orders to the respondent for the supply of stationary in which the respondent was dealing. It was alleged by the appellant, the respondent is doing business in the name of M/s Laxmi Papers.

3. It was further averred sometimes the appellant made payments in cash and but later in consideration of the supply of paper products the

appellant had issued three cheques totaling to ₹ 8,72,123/- in discharge of partial liability. Admittedly, all these three cheques were dishonoured for reasons 'insufficient funds', hence a notice was issued by the respondent upon the appellant and then this suit under Order 37 CPC was filed. A criminal complaint under Section 138 of Negotiable Instruments Act was also filed against the appellant.

4. An application under Order 37 Rule (3)5 CPC seeking leave to defend was filed by the appellant wherein the appellant alleged he is an old aged senior citizen, visually impaired, can sign only on putting hand on paper and had retired from a Government job, drawing handsome pension and that his son-in-law Mr.Kaliya may have stolen the cheques and sold it to the respondent who is indulged in and is a master of these type of cases to grab money from people as his routine business. It was averred the appellant never had any business and had never issued any cheques.

5. It is alleged the respondent never filed any bill, any order, any slip of dealing or any type of agreement/ contract on record and the cheques were without consideration. It is further averred the appellant has never been in stationary/paper business as is a retired employee and the three cheques are in different handwriting(s) and moreover the signatures on these cheques are also not of the appellant. The appellant's counsel requested the court to compare it with admitted signatures of the appellant on the applications and affidavits filed, being different than those on the subject cheques, which otherwise, also are alleged to be without consideration.

6. Though a *plausible* defence is raised by the appellant but it appears to be *improbable*. At this stage the learned counsel for the respondent fairly concedes to grant conditional leave to defend to the appellant on deposit of subject cheque(s) amount.

7. In the circumstances, conditional leave to defend is granted to the appellant, now represented through his legal heirs, on their deposit of cheque(s) amount of ₹ 8,72,123/- within four weeks from today. If such amount is not deposited, the decree shall follow per rule 3(6)(b) of Order 37 CPC. Needless to state the amount so deposited will be subject to final disposal of the suit on merits. The amount so deposited with the learned trial court shall be kept in an interest bearing FDR, initially for a period of one year with an automatic renewal clause.

8. The trial court not to be influenced by any observation. Both the parties to appear before the learned trial court on 16th December, 2019, at 10.00AM for further proceedings in accordance with law.

9. In lieu thereof the impugned order is set aside. The appeal stands disposed of in terms above. Pending application(s), if any, are all also disposed of. No order as to costs.

10. Copy of this order be sent to the learned trial court for information and compliance.

YOGESH KHANNA, J.

NOVEMBER 28, 2019

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