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

***Reserved on: 2nd March, 2020***
***Pronounced on: 20th March, 2020***

**+ <u>CS(OS) 56/2019</u>**

MR. CHETAN SINGH ..... Plaintiff
Through: Mr. Amit Bhagat & Mr.Tarun Sharma, Advocates

versus

MR. R.C. CHADDA ..... Defendant
Through: Mr. C.M. Grover, Advocate

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**CORAM:**
**HON'BLE MR. JUSTICE PRATEEK JALAN**

**<u>J U D G M E N T</u>**

<u>**I.A. 4399/2019** *(under Order XXXVII Rule 3 Sub Rule 4 of the CPC for issuance of summons for judgment to be served on the defendant)* **& I.A. 7397/2019** *(under Order XXXVII Rule 3(5) of the CPC seeking leave to defend)*</u>

1. The plaintiff has filed the present suit under Order XXXVII of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] for recovery of a sum of ₹2,00,10,000/- from the defendant, alongwith interest *pendente lite* and future interest @ 15% per annum. I.A. 4399/2019 is the plaintiff's application for summons for judgment and I.A. 7397/2019 is the defendant's application for leave to defend the suit.

***Facts***

2. The case made out in the plaint is that the defendant (who is a practising chartered accountant) was a friend of the plaintiff, and sought financial assistance for the purpose of making certain investments. According to the plaintiff, the amount advanced was to be repaid within eight quarters and carried interest of 15% per annum, payable quarterly. The plaintiff has given details of the electronic transfer of various sums of money from the plaintiff's account to the defendant's account, between 25.03.2014 and 08.06.2016, amounting to a sum of ₹1,60,00,000/-.

3. The plaintiff has also placed on record confirmations of account stated to have been issued and signed by the defendant. These confirmations are dated 06.07.2014 (with respect to the sum of ₹1,00,00,000/-), 19.01.2016 (with respect to sum of ₹1,40,00,000/-) and 20.08.2016 (with respect to sum of ₹1,60,00,000/-). The latter two confirmations also contain handwritten endorsements by the defendant, to which reference shall be made later in this judgment.

4. The plaintiff has further stated that the defendant did not pay the quarterly interest, as agreed, in full, and in fact paid a total sum of only ₹21,10,000/- between 28.07.2016 and 17.04.2018. This includes a sum of ₹1,70,000/- paid by the defendant to the Income Tax department in discharge of the plaintiff's tax liability for the financial year 2017-18. The plaintiff's demand for repayment of amount advanced was unfruitful, resulting in the institution of the present suit. Of the amount of ₹2,00,10,000/- claimed, ₹1,60,00,000/- is on account of principal and ₹40,10,000/- is on account of unpaid interest.

5. Upon service of summons, the defendant entered appearance, after which the parties have filed the applications under consideration.

6. In the application for leave to defend, the defendant has stated that the plaintiff remitted the aforesaid sum of ₹1,60,00,000/- to the defendant, pursuant to the plaintiff's request that the defendant assist him in making some investments in property. The defendant had, at that time, already invested in certain properties, enumerated in the application, and accepted the plaintiff's request to participate in those investments. According to the defendant, a memorandum of understanding (hereinafter, "MoU") was executed between the parties in March, 2014, which remains in the custody of the plaintiff. The defendant's case is that, after some modification of the properties subject to joint investment, the position which emerged was that the plaintiff and the defendant had joint investments in four properties of a cumulative value of ₹6,70,21,000/-. The defendant claims that, of this amount, he had invested ₹3,72,15,000/- and the plaintiff had invested ₹1,60,00,000/-, leaving a balance of ₹1,38,06,000/- to be paid in future. As far as the balance confirmations relied upon by the plaintiff are concerned, the defendant has characterized the same as "false and frivolous", and denied issuance of the confirmation. In the application, the defendant has also submitted that the plaintiff's claim for interest is unsupported by any calculation or computation, which would justify the claim of ₹40,10,000/- on such account.

***Submissions***

7. In support of the defendant's application for leave to defend, Mr. C.M.Grover, learned counsel, drew my attention to certain

agreements between the defendant and various builders, which have been placed on record to substantiate the defendant's case regarding the investments in property. Although he conceded that the defendant has not denied the receipt of the amount of ₹1,60,00,000/- from the plaintiff, he reiterated that the purpose of the remittance was for the defendant to undertake joint investments on behalf of the parties. He drew my attention to the averments in the application for leave to defend wherein the defendant has denied issuing the acknowledgements relied upon by the plaintiff, and also stated that his signatures have been misused.

8. Mr. Amit Bhagat, learned counsel for the plaintiff, on the other hand, submitted that the alleged MoU was neither placed on record nor was any other evidence of its existence produced by the defendant. The agreements between the defendant and the builders, according to learned counsel, do not mention the plaintiff at all. He reiterated that the acknowledgements contained in the confirmation of accounts constitute promises to pay, in terms of the judgments of this Court in *First Lucre Partnership Co. vs. Abhinandan Jain*, 2013 (202) DLT 177 (paragraphs 19 and 21), *Daya Chand Uttam Prakash Jain & Anr. vs. Santosh Devi Sharma*, (1997) 67 DLT 13 (paragraph 14) and *Mohan Murti vs. Deutache Ranco, GMBH*, 2015 SCCOnLine Del 7679 [RFA(OS)5/1994, decided on 27.02.2015] (paragraphs 39 and 40). The defendant's admitted and acknowledged partial payment of interest is also inconsistent with the plea of joint investment as opposed to a loan/advance.

## ***Analysis***

9. The principles governing grant of leave to defend have been summarized by the Supreme Court in *IDBI Trusteeship vs. Hubtown* (paragraph 17) in the following terms:

> *"17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36] , as follows:*
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> *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."*

10. In the present case, the receipt of the amount of ₹1,60,00,000/- by the defendant is not denied. The plea of the defendant, however, is that a MoU was executed between the parties, pursuant to which they undertook joint investments. The defendant has not produced a copy of the MoU, and contends that it lies in the custody of the plaintiff. It is difficult to accept the case of the defendant – who is a practising chartered accountant – that he entered into commercial transactions of this nature without retaining a copy of the documentation. The property documents disclosed by the defendant are in his own name, and do not mention the plaintiff at all. However, even assuming that a MoU was entered into in March 2014, as claimed by the defendant, this cannot explain the three subsequent acknowledgements dated 06.07.2014, 19.01.2016, and 20.08.2016. The defendant's case is also inconsistent with the partial payments of interest that have admittedly been made by him to the plaintiff. The purported defence on this account, therefore, does not raise any triable issue.

11. With regard to the acknowledgements contained in the confirmations of account, the documents placed on record contain the signature of the defendant. The first of the acknowledgements is dated 06.07.2014, and is for the period 01.04.2013 to 03.07.2014. It is purportedly addressed to the plaintiff by the defendant. The defendant has signed the document, and also confirmed the same. The second confirmation of account (dated 19.01.2016) contains the following handwritten endorsement, above the signature of the defendant: -

> *"Subsequent to addition of Rs. 40,00,000/00 as above I hereby confirm the above amount of Rs. 1,40,00,000/00 (One crore forty lacs) due from me and bears interest @ 15% P.A. with tax returns stipulation. Interest to be settled at quarterly rests. Other terms as settled earlier vide earlier confirmation dated 6.7.2014*
>
> *Rakesh Chadda*
> *19.1.2016"*

Similarly, on the acknowledgement dated 20.08.2016, the defendant has made the following handwritten endorsement: -

> "*I hereby confirm the above amount of Rs.1,60,00,000/- (one crore sixty lacs) due from me and bears interest @ 15% P.A. with tax neutral stipulation, Interest to be settled at quarterly rests. Other terms as settled earlier per verbal discussions*
>
> *Rakesh Chadda*
> *20.08.2016*"

12. As far as the confirmations of account are concerned, the defendant's contention is that the confirmation dated 06.07.2014 is "false and frivolous", and that it was never issued by him. The defendant has also denied issuing the confirmation letters dated 19.01.2016 and 20.08.2016, and has alleged that "the plaintiff had

misused the signatures". However, the defendant has not given any plausible explanation in support of these contentions. He has not denied the genuineness of his signatures on these documents. The defendant is himself a chartered accountant and, according to his own application, one who is engaged in several high value commercial transactions. Such a bare plea on his behalf cannot raise a genuine triable issue.

13. To the contrary, the aforesaid documents demonstrate a clear acknowledgement of liability as far as the principal amount and the rate of interest are concerned. These acknowledgments do not bear out the defendant's case of any MoU regarding joint investments. The judgment of this Court in *First Lucre* (supra) relies upon the judgments of the Bombay High Court in *R.Kumar and Co. vs. Chemicals Unlimited* AIR 2001 Bom 116, and *Sun N Sand Hotel Ltd. vs. V.V. Kamat,* AIR 2003 Bom 168 to hold that the acknowledgment of debts by the defendant would constitute confirmation of the amounts due and payable by him to the plaintiff. To similar effect is the judgment in *Daya Chand* (supra). The position has been examined by the Division Bench in *Mohan Murti* (supra) wherein it has been held that whether or not an acknowledgment constitutes a written contract for the purposes of Order XXXVII of the CPC would depend upon whether there was *consensus ad idem* between the parties as to the debt. In the present case, the defendant has, in addition to signing the acknowledgements, also made the above-extracted handwritten endorsements. Those are clear and do not admit of any ambiguity. It is

stated that the amounts are "due from me", and the rate of interest and periodicity are also mentioned.

14. The defendant's contention, that the plaintiff's claim for interest of ₹40,10,000/- is unsupported by any calculation or computation, is also untenable. The rate of interest is mentioned in the defendant's endorsements on the statements of account. The dates on which various amounts were paid by the plaintiff to the defendant have also been mentioned. Even a computation of simple interest at the admitted rate from the dates on which the amounts were paid, until the filing of the suit, after adjustment of the sum of ₹21,10,000/-, admittedly paid by the defendant towards interest, would yield an interest liability far in excess of the amount of ₹40,10,000/-, claimed by the plaintiff.

15. In these circumstances, I hold that the defences pleaded in this application for leave to defend do not reveal the existence of any triable issues, and are entirely frivolous and vexatious. The question of granting leave to defend, even conditional, would arise only if the defence raised was "plausible but improbable", as formulated by the Supreme Court in paragraph 17.4 of *IDBI Trusteeship* (supra). The defendant in the present case has, in my view, failed to meet even this minimal standard, and the present case falls, instead, within paragraph 17.5 of the said judgment.

16. The defendant's application for leave to defend therefore fails, and the plaintiff is entitled to judgment forthwith.

***Conclusion***

17. In view of the above, I.A.7397/2019 is dismissed, and I.A.4399/2019 is allowed.

18. The suit is decreed in favour of the plaintiff in the sum of ₹2,00,10,000/-, alongwith interest *pendente lite* and future interest at the rate of 9% per annum (simple interest) from the date of filing of the suit until realization. The plaintiff is also entitled to costs assessed at ₹2,50,000/-, including court fees of ₹1,97,650/-. Decree sheet be prepared accordingly.

19. The suit and all pending application(s) stand disposed of in the terms above.

**PRATEEK JALAN, J.**

**MARCH 20, 2020**
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