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

Date of Decision: 17th February, 2022

+ **RSA 20/2022 & CM APPLs.8771-72/2022**

CHANDER PAL SINGH Appellant
Through: Mr. Madan Lal Kalkal, Advocate.
versus

SHRIPAL SINGH Respondent
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present second appeal has been filed challenging the impugned judgment/decreed dated 4th January, 2022 in **RCA No. 29/2020** titled **Chander Pal Singh v. Shripal Singh** passed by the Ld. ADJ-01 (East) KKD/Delhi (*hereinafter "Appellate Court"*). Vide the said order, the appeal against the judgment/decreed dated 17th August, 2020 in **Suit No. 670/2019** titled **Shri Pal Singh v. Chandra Pal Singh** passed by the CJ/East/KKD (*hereinafter "Trial Court"*) has been dismissed.
3. The background of the case is that a summary suit seeking recovery of Rs.2 lakhs along with interest was filed by the Respondent/Plaintiff (*hereinafter "Plaintiff"*) before the Trial Court. The said suit under Order XXXVII CPC was based on a cheque of Rs.2 lakhs bearing no.812818 dated 29th October, 2016 which was stated to have been given in repayment of a friendly loan given by the Plaintiff to the Appellant/Defendant (*hereinafter "Defendant"*). In the leave to defend application, the Defendant claimed that



the signatures on the cheque are admitted, however, the said cheque was blank when it was issued to one Mr. Prem Singh who is the brother of the Plaintiff. Mr. Madan, Id. Counsel for the Defendant, submits that there is no privity of contract between the Defendant and the Plaintiff whatsoever. However, the Trial Court has held that the cheque was issued by the Defendant and held that there is no triable issue which has arisen in the present suit. The Appellate Court has also agreed with the said finding.

4. Ld. counsel for the Defendant further submits that there is a substantial question of law that arises in the present case. He submits that the brother of the Plaintiff was running a chit fund business and the amount, which was to be paid to him by the Defendant, was Rs.50,000/- only. Ld. counsel for the Defendant submits that for the said purpose, a blank cheque was issued by the Defendant.

5. This Court has heard counsel for the Defendant.

6. The first and the foremost important issue in the case is that the signature on the cheque is admitted. However, it is then argued that the drawee's name and amount etc., were left blank and was misused by the Plaintiff's brother. In this modern age, it is not acceptable that anybody would issue a signed blank cheque, that too with the name and amount being left blank. It is normal practice dictated by prudence, that when cheques are issued, name and amounts are filled, as there is always an apprehension of misuse. Contention of Id. Counsel for the Defendant, that the cheque was issued blank, simply with signatures is not acceptable to this Court. If such a plea is accepted, in each and every case relating to a financial instrument such as a cheque a plea can be taken that the same was a blank cheque which was only signed so that the suit goes into the vortex of delays. A



criminal complaint is stated to have been filed in February 2017 relating to misuse of the cheque. However, it is relevant to point out that such a complaint was filed only after the legal notice was issued by the Plaintiff. This is also not usual conduct. If a cheque book is lost or if there is a fear of misuse of a cheque, the normal conduct in financial transactions would be to file a complaint immediately and not wait for receipt of a legal notice *qua* dishonouring of the cheque.

7. Simply because the Defendant is arguing that there is no privity between the parties would not mean that the same has to be accepted by the Court. A cheque is a monetary instrument and it is expected that a person who deals with a cheque and cheque books, would deal with them responsibly. The Calcutta High Court in ***Pankaj Kumar Goel vs. B.P. Projects Pvt. Ltd., (2019) 1 WBLR (Cal) 13*** has held as under:

“13. State Bank of Hyderabad (supra) the Hon'ble Supreme Court followed the principles laid down in as early as in 1949 in Kiranmoyee v. J. Chatterjee reported at AIR 1949 Cal 479 summary of which is indicated above. The principles that emerge from consideration of all the authorities appears to be that if the Court is satisfied that the defendant has raised a triable issue or a reasonable defence, the defendant is entitled to unconditional leave to defend. If on consideration of the facts disclosed by the defendant in the application for unconditional leave to defend, the Court forms an impression that although it does not disclose the defence so convincing but there is a little hope or chance of establishing such defence at the trial, leave may be granted on conditions. Only in the case where the defence Set up is illusory or sham or practically moonshine the plaintiff is entitled to leave to sign judgment. In



such a proceeding the interest of both the parties needs to be looked into and it needs to be seen whether the defendant raises a real issue and not a sham one. The Court may not reject the defence on the ground of implausibility or inconsistency if the Court is otherwise convinced that the defence disclosed may likely to succeed at the trial. The cautious approach of the Court is because unlike a prolonged trial the suit is decided summarily on the basis of affidavit evidence. The instant case comes close to clauses (iv) and (v) of IDBI (supra) and an opportunity is given to the defendant to contest the suit on conditional. The reason for granting conditional leave to defend is on the premise that at the trial the defendant may be able to establish that the goods worth Rs. 72,48,938/- were never supplied and accordingly the question of issuing any cheque for the said sum would not arise. However the two confirmations of accounts one originated from the defendant and the other from the plaintiff cannot be brushed aside, altogether. This is followed by the cheque which is now disputed. It prima facie constitutes acknowledgment of liability. It is submitted on behalf of the defendant that it had never been a past practice to issue balance confirmations which may be a matter to be taken into consideration at the trial. **It is also to be seen that some of the payments disclosed by the defendant were made by cheques. A cheque duly signed by a party in favour of a payee raises a strong presumption of indebtedness. The signature of the defendant on the cheque is not denied. It is also unusual and implausible if not absurd that an entire cheque book duly signed by the defendant in blank is left uncared and unattended. The defendant has also not disclosed the date on which the said account with Standard Chartered Bank was closed. In case of**



closure of accounts the unused cheque books are surrendered. A business man would not keep a blank signed cheque book when there is a possibility of such cheques being misused. It is equally possible that the defendant has purposely issued the cheque knowing fully well that the said cheque would not be honoured. In the instant case the parties appear to have long standing relationship and it is difficult to accept that plaintiff would enter the office of the defendant to steal the cheque book. The defendant did not deny supply of goods beyond October 2015. On such consideration the defendant is granted leave to defend upon furnishing cash security of Rs. 35 lakh within a period of three weeks from date with the Registrar, High Court Original Side, in default, the plaintiff shall be entitled to sign judgment for Rs. 72,48,938/- together with interest at the rate of 8 per annum from the date of filing of the suit until realisation.

8. As far as the issue of leave to defend is concerned, the law is well settled that if the Defendant has no substantial defence and the defendant does not raise any genuine triable issue, the leave to defend is liable to be refused and the Plaintiff is entitled to judgment forthwith. The Supreme Court in **IDBI Trusteeship Services Ltd. v. Hubtown Ltd. AIR 2016 SC 5321** has held as under:

“18. 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:

a. 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;

b. 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;

c. 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;

d. 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.

e. 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;

f. 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.

9. Recently, the Supreme Court in ***B.L. Kashyap and Sons Ltd. v. JMS Steels and Power Corporation and Ors. C.A. No. 379/2022 decided on 18th January 2022***, relying upon ***IDBI (supra)***, has held that the leave to defend can be refused only in those cases where the Defendant has no substantial defence and is raising no genuine triable issues coupled with the Court's view that the defence is frivolous or vexatious. The Supreme Court has further observed in the said judgment that Court can impose heightened conditions as to payment into Court of the entire principal sum together with just and requisite interest where it is of the opinion that the defence raised by the Defendant is plausible but improbable. The relevant portion of the judgment reads:

“17.1. As noticed, if the Defendant satisfies the Court that he has substantial defence, i.e., a defence which is likely to succeed, he is entitled to unconditional leave to defend. In the second eventuality, where the Defendant raises triable issues indicating a fair or bonafide or reasonable defence, albeit not a positively good defence, he would be ordinarily entitled to unconditional leave to defend. In the third eventuality, where the Defendant raises triable issues, but it remains doubtful if the Defendant is raising the same in good faith or about genuineness of the issues, the Trial Court is expected to balance the requirements of expeditious disposal of commercial causes on one hand and of not shutting out triable issues by unduly severe orders on the other.



Therefore, the Trial Court may impose conditions both as to time or mode of trial as well as payment into the Court or furnishing security. In the fourth eventuality, where the proposed defence appear to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also of payment into the Court or furnishing security or both, which may extend to the entire principal sum together with just and requisite interest.

17.2. Thus, it could be seen that in the case of substantial defence, the Defendant is entitled to unconditional leave; and even in the case of a triable issue on a fair and reasonable defence, the Defendant is ordinarily entitled to unconditional leave to defend. In case of doubts about the intent of the Defendant or genuineness of the triable issues as also the probability of defence, the leave could yet be granted but while imposing conditions as to the time or mode of trial or payment or furnishing security. Thus, even in such cases of doubts or reservations, denial of leave to defend is not the rule; but appropriate conditions may be imposed while granting the leave. It is only in the case where the Defendant is found to be having no substantial defence and/or raising no genuine triable issues coupled with the Court's view that the defence is frivolous or vexatious that the leave to defend is to be refused and the Plaintiff is entitled to judgment forthwith. Of course, in the case where any part of the amount claimed by the Plaintiff is admitted by the Defendant, leave to defend is not to be granted unless the amount so admitted is deposited by the Defendant in the Court.

17.3. Therefore, while dealing with an application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the Rule or that the leave to defend is to be granted only



in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues, with the Defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave. **It gets perforce reiterated that even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated above could be imposed while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the Defendant fails to show any genuine triable issue and the Court finds the defence to be frivolous or vexatious.**

10. A perusal of the above decisions extracted above shows that unconditional leave to defend can be granted by the Court only when a substantial defence is raised by the Defendant. The defence raised in this case does not seem to be plausible. It is worth reiterating that in the present case, the signature on the cheque is admitted by Defendant. The only defence raised by the Defendant is that a blank cheque given by the Defendant has been misappropriated by the Plaintiff. The said defence does not inspire the confidence of the Court and is neither triable nor substantial. It is merely a plea taken to defeat the purpose of the issuance of the cheque itself. The Court enquired from the Ld. Counsel of the Defendant if he would be willing to deposit the entire principal amount. However, the Defendant has expressed inability to deposit the said amount.

11. Additionally, The Trial Court and the Appellate Court have arrived at a concurrent finding that there is no triable issue in the matter. It is settled law that in a second appeal, the High Court ought not to interfere with



the concurrent findings of the lower Court unless interference is warranted due to compelling reasons. In *C Doddanarayana Reddy (Dead) by LRs & Ors v C Jayarama Reddy (Dead) by LRs & Ors AIR 2020 SC 1912* it has been held by the Supreme Court that:

“25. The question as to whether a substantial question of law arises, has been a subject matter of interpretation by this Court. In the judgment reported as Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan: (1999) 6 SCC 343, it was held that findings of the fact could not have been interfered within the second appeal. This Court held as under:

12. This Court had repeatedly held that the power of the High Court to interfere in second appeal Under Section 100 Code of Civil Procedure is limited solely to decide a substantial question of law, if at all the same arises in the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.

13. In Ramanuja Naidu v. V. Kanniah Naidu (1996 3 SCC 392), this Court held:

It is now well settled that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High Court in exercise of its jurisdiction Under Section 100 of Code of Civil Procedure. The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal Under Section 100 of the Code in the way he did.



14. In Navaneethammal v. Arjuna Chetty (1996 6 SCC 166), this Court held: Interference with the concurrent findings of the courts below by the High Court Under Section 100 Code of Civil Procedure must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to reappreciate the evidence just to replace the findings of the lower courts.... Even assuming that another view is possible on a reappreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material. ”

12. Under such circumstances, the suit under Order XXXVII CPC shall be maintainable and it is held that the Defendant has not made out any case for grant of leave to defend.

13. The appeal is, accordingly, dismissed as no substantial questions of law arise in this appeal. The miscellaneous pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 17, 2022/dk/sk
(corrected & released on 21st February, 2022)