



\$~58 (Appellate)

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

+ CM(M) 985/2022 & CM APPL. 40991/2022, CM APPL. 40992/2022, CM APPL. 40993/2022

MAMTA DESAUR & ANR.

..... Petitioners

Through: Mr. Rajinder Pal Singh, Mr. Gurjit Singh and Mr. Sahil Goel, Advs.

versus

VIVEK AGGARWAL

..... Respondent

Through: Mr. Mr. Lokesh Bhola, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

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16.09.2022

1. The impugned order dated 20th July 2022, passed by the learned District Judge (Commercial Court) (the learned Commercial Court), in CS (Comm) 173/2021 (*Vivek Aggarwal v. Mamta Desaur*), subjects the grant of leave to defend, to the petitioner, under Order XXXVII Rule 3(5) of the Code of Civil Procedure, 1908 (CPC) to a condition of deposit of ₹ 9,69,548/- with the court.

2. The aforesaid requirement of deposit, by the petitioner, of ₹ 9,69,548/-, as a condition for grant of leave to defend the suit instituted by the respondent against the petitioner has been assailed by the petitioner, under Article 227 of the Constitution of India. The petitioner, in another words, submits that he is entitled to unconditional leave to



defend.

3. A brief recital of facts would be appropriate.

4. The respondent, as the plaintiff in CS (Comm) 173/2021, claimed to have been involved in a business relationship with the petitioner since 2012. The plaint asserts that, against purchase orders placed by the petitioner on the respondent, the petitioner was making timely payments. However, against goods worth ₹ 10,78,575/-, stated to have been supplied by the respondent to the petitioner between 2013 and 2015, the plaint alleged that the petitioner had paid only ₹ 1,09,027/-, and that several invoices, raised by the respondent, still remained outstanding. The total amount due from the petitioner as on 21st January 2015 was alleged to be ₹ 9,69,548/-.

5. A cheque, dated 24th November 2017, for the aforesaid amount of ₹ 9,69,548/-, provided by the petitioner, it was alleged, was dishonoured, with the comment “account blocked”.

6. In these circumstances, the respondent, by the aforesaid suit under Order XXXVII of the CPC, sought recovery, from the petitioner, of ₹ 9,69,548/- along with interest, totalling to ₹ 17,65,530/-.

7. The petitioner, in his application under Order XXXVII Rule 3(5) for leave to defend the suit, submitted that the cheque was tendered by



way of a security payment, and was handed over blank to the respondent. The respondent was alleged to have misused the cheque and filled in the amount of ₹ 9,69,548/-. It was also alleged that the suit was barred by time.

8. Further, the application for leave to defend alleged that the ledger account of the respondent contained several missing cash entries, which reflected amounts paid by the petitioner to the respondent in cash.

9. The essential case that Mr. Rajinder Pal Singh, learned Counsel for the petitioner, advances is that (i) the amounts due from the petitioner to the respondent were in fact paid by the petitioner in cash, (ii) these cash entries had been removed from the ledger of the respondent and the discrepancy in that regard had been acknowledged by the respondent as reflected in the impugned order dated 20th July 2022, (iii) the cheque of ₹ 9,69,548/- on which the respondent had premised his suit, was actually tendered as a blank cheque by the petitioner to the respondent against certain security payment and was misused by the respondent and (iv) as all payments due from the petitioner to the respondent having already been made in cash, there was no occasion for the petitioner to fill in the said amount in the cheque.

10. The learned Commercial Court has, in the impugned order, noted the fact that the respondent conceded that some of the cash receipts were



not reflected in the ledger accounts. On this ground, the learned Commercial Court has granted leave, to the petitioner, to defend the suit, but has conditioned the grant of leave with the requirement of payment, by the petitioner, into court, of ₹ 9,69,548/- by way of an FDR.

11. Having heard learned Counsel for the parties and having perused the material on record, I do not find any cause to interfere with the impugned order, especially within the narrow parameters of the confines of the jurisdiction vested in this Court by Article 227 of the Constitution of India.

12. The law relating to imposition of conditions for grant of leave to defend under Order XXXVII Rule 3(5) of the CPC has, undoubtedly, been considerably liberalised. The position of law, as it exists today, is that, where a triable issue is found to exist, unconditional leave to defend is normally to be granted.

13. The imposition of conditions for grant of leave to defend is now held to be the exception where Order XXXVII Rule 3(5) of the CPC is concerned.

14. Having said that, the decision on whether to impose, or not to impose, conditions for grant of leave to defend, is undoubtedly discretionary in nature. Interference with such a discretionary order would be justified, under Article 227 of the Constitution of India, only



where the exercise of discretion is palpably erroneous, has resulted in injustice or violates the law applicable in that regard.

15. Apropos the cheque for ₹ 9,69,548/-, the petitioner does not dispute the fact that the cheque was signed by him. The only case that the petitioner seeks to build up, qua this cheque, is that the cheque was tendered as a blank cheque against certain security payments. No supportive material, in that regard, is cited in the application seeking leave to defend.

16. No doubt the petitioner has emphasized the fact that the ledger account of the respondent does not reflect certain cash payments which the petitioner made to the respondent and, to that extent, the impugned order also records a concession on the part of the respondent. There is, however, nothing to indicate that the aforesaid amount of ₹ 9,69,548/- was part of the said discrepant ledger entries.

17. As such, the mere fact that the petitioner is disputing the correctness of the ledger account of the respondent, qua certain cash payments, cannot detract from the fact that the petitioner has not provided any substantial ground to question the claim of the respondent for ₹ 9,69,548/-, based on the aforesaid cheque, in his application for leave to defend. This fact assumes importance as the petitioner is not disputing the fact that the signature on the said cheque is indeed that of the petitioner.



18. In that view of the matter, at the Order XXXVII Rule 3(5) stage, no error or infirmity, whatsoever, can be said to be exist in the decision of the learned ADJ to make the grant of leave to defend conditional upon the petitioner depositing ₹ 9,69,548/- with the court.

19. No occasion arises for this Court to interfere with the impugned order under Article 227 of the Constitution of India.

20. However, the time for deposit, by the petitioner, of the said amount, is extended by a period of six weeks from today.

21. With the aforesaid observation, this petition is dismissed in *limine*, with no order as to costs.

22. Miscellaneous applications also stand disposed of.

SEPTEMBER 16, 2022/kr

C.HARI SHANKAR, J.