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

% Judgment delivered on: 20.03.2023

\+ CM(M) 421/2023, CM APPL. 12599/2023 & CM APPL. 12600/2023

HANSRAJ GANGWAL ..... Petitioner

versus

GAJENDER SINGH ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Peeyush Ranjan and Mr. Rajiv Ranjan, Advocates.

For the Respondent : None.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioner challenges the order dated 23.11.2022 passed in Civ DJ 606/2021 titled as "Gajender Singh vs. Hansraj Gangwal" whereby the learned Trial Court had granted conditional leave to defend to the petitioner/ defendant, subject to the condition that the defendant deposits a sum of Rs. 2 Lakhs before the learned Trial Court out of a total amount of claim of Rs. 3.30 Lakhs raised by the respondent/ plaintiff.

2. Learned counsel submits that the petitioner has a good case on

merits which neither moonshine nor vexacious. Learned counsel also submits that the petitioner has in fact filed documents in the form of a diary, whereby the entries of the amount paid in instalments back to the respondent/ plaintiff has been noted.

3. Learned counsel submits that the learned Trial Court ought to have considered the entries in the diary, which categorically show the repayment of the claim amount. On that basis, learned counsel submits that the petitioner/ defendant was entitled to an un-conditional leave to defend.

4. Learned counsel submits that the Trial Court has wrongly concluded that the defence of the petitioner is improbable and in tune with the judgment of Supreme Court in ***IDBI Trusteeship Services Ltd. vs. Hubtown Ltd.***, reported in **(2017) 1 SCC 568**, has granted conditional leave to defend.

5. Learned counsel next submits that the deposit of Rs. 2 Lakhs as a conditional leave to defend is onerous and burdensome upon the petitioner, who will not be able to afford to deposit such a huge amount.

6. This Court has also considered the submissions made by the learned counsel, as also carefully considered the impugned order.

7. This Court has considered the entries as shown by learned counsel in the diary that was stated to be maintained by the petitioner/ defendant wherein, the repayment of instalment of the amount claimed by the respondent/ plaintiff was entered, as also the submission that the petitioner/ defendant had defrayed the amount claimed by the respondent/ plaintiff in the plaint and, therefore, the direction to deposit the conditional amount was incorrect.

8. The aforesaid submission would not withstand scrutiny of law inasmuch as the diary, which is stated to be containing entries of the repayment of the loan has not been admitted by the respondent/ plaintiff in the reply to the leave to defend of the petitioner/ defendant.

9. That apart, at this stage, accepting or not accepting the documents on their face value does not arise, since the said issue would be subject matter of the trial.

10. So far as the submission of the learned counsel that the petitioner/ defendant is not in a financial position to make the deposit as directed by the impugned order is concerned, the petitioner has not filed any document regarding the financial condition of the petitioner, to enable this Court to assess the incapacity to deposit.

11. Having regard to the fact that there is not even a single document or even an averment to the effect as to how the petitioner is not in a condition or is in a financial hardship to not be able to make the deposit as directed, this Court is unable to appreciate the said submission too.

12. In view of the aforesaid, this Court is of the considered opinion that the direction of the learned Trial Court so far as the direction to deposit, subject whereof the leave to defend has been granted is concerned, no interference is warranted by this Court under Article 227 of the Constitution of India and accordingly, the present petition along with pending applications is dismissed with no order as to costs.

TUSHAR RAO GEDELA, J

MARCH 20, 2023
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