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

% ***Date of decision: 16th February, 2023***

\+ RFA 178/2021 & C.M. APPL. 11186/2021

CHANDER MOHAN ..... Appellant
Through: Mr. Sarthak Maggon, Advocate.

versus

TEJINDER SINGH ..... Respondent
Through: Mr. Ankur Jain, Advocate.

\+ RFA 179/2021 & C.M. APPL. 11195/2021

CHANDER MOHAN ..... Appellant
Through: Mr. Sarthak Maggon, Advocate.

versus

BALVINDER KAUR ..... Respondent
Through: Mr. Mohit Gupta and Mr. Pankaj Gupta, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. Present appeals have been filed assailing the impugned judgments and decrees dated 20.09.2019 as well as the orders dated 21.05.2019 whereby conditional leave to defend was granted to the Appellant. Appellant has prayed for a direction that unconditional leave to defend be granted to them to enable them to contest the suits. Since the parties have raised common contentions in both the appeals and there is a similitude of issues involved, both appeals were heard together and are being decided by this common judgment. The

Appellant before this Court was the Defendant before the Trial Court and the Respondents were the Plaintiffs, respectively in the two suits and the parties are hereinafter referred to by their litigating status before this Court.

2. The suits out of which the present appeals arise were filed for recovery of certain sums of money under Order 37 CPC. Respondents filed applications on 23.05.2016 for passing decree under Order 37 Rule 2(3) CPC. On 12.09.2016, Appellant filed his memo of appearance and *vakalatnama* in accordance with the provisions of Order 37 CPC. Applications were filed by the Respondents under Order 37 Rule 4 CPC on 19.09.2016 for issuance of summons for judgment and on 29.09.2016 leave to defend applications were filed by the Appellant. Replies were filed by the Respondents to the leave to defend application on 01.10.2016.

3. *Vide* the impugned orders dated 21.05.2019 the Trial Court granted conditional leave to the Appellant to defend the suit upon payment of Rs.10,00,000/- and Rs.15,00,000/-, respectively by way of fixed deposits. Review applications were filed by the Appellant challenging the conditions imposed by the Trial Court which were dismissed on 19.09.2019 and the impugned decrees were thereafter passed by the Trial Court on 20.09.2019 upon failure of the Appellant to comply with the conditions imposed while granting leave to defend.

RFA No. 178/2021

(A) It is the case of the Respondent that he filed a summary suit for recovery of an amount of Rs.39,92,900/- along with *pendente lite* and future interest. It was the case of the Respondent that he had advanced a loan of Rs.27,00,000/- to the Appellant on 20.03.2014 as Appellant had approached him for money to meet certain requirements of his business. The money was advanced on the assurance of the Appellant that he would return the money within one month. An agreement was executed between the parties whereby Appellant agreed to pay interest at the rate of 1.5% p.m. from 20.03.2014 and on 21.04.2014, Appellant handed over the security cheques. Appellant again approached the Respondent on 30.12.2014 seeking further loan of Rs.3,00,000/-, which was again advanced by the Respondent and in order to gain trust of the Respondent, Appellant also executed an agreement to sell dated 30.12.2014 agreeing that in the event of failure of repayment, Appellant shall transfer the ownership right of property bearing half portion of basement at A-131, Vishal Enclave, Rajouri Garden, Delhi which was under the exclusive ownership and possession of the Appellant.

(B) It was averred in the plaint that on 19.09.2015 Appellant requested the Respondent to give further time of 03 months to repay the loan and issue post-dated cheques towards principal amount along with interest bearing cheque no. 806343 dated 20.12.2015, for a total amount of Rs.37,67,900/-. Another cheque no. 806342 dated 20.12.2015 for a sum of Rs.1,35,000/- was also issued towards interest from 20.09.2015 to 19.12.2015. As per the Respondent, a legal notice dated 30.12.2015 was served on the Appellant intimating that the cheques shall be encashed but there was no response. Finally, the Respondent presented the aforementioned cheques for encashment, however, the same were returned with the remarks 'payment stopped by drawer'. Since the Appellant failed to pay back the loan amounts, the Respondent filed a suit being CS No. 11274/2016.

(C) Case of the Appellant before the Trial Court was that the suit was not maintainable Order 37 Rule 2 CPC, as there was no written contract or guarantees between the parties. The suit was filed with an oblique motive to enrich himself at the behest of his mother-in-law Smt. Balvinder Kaur. It was asserted that blank signed cheques and forged documents were obtained from the Appellant for which complaints were made before the Police authorities. It was also stated that blank cheques were lost by the Appellant for which although online complaints were made to the Police which were registered but no action was taken by the Police and therefore instructions were issued to the Bank to stop the payments under the cheques in question. Appellant also took a stand that he had never met the Respondent and the suit was filed to extort money from the Appellant. The Loan Agreement dated 21.04.2014 and the Agreement to Sell dated 30.12.2014 as well as the cheques were claimed to be unauthenticated and forged and fabricated documents.

<u>RFA No. 179/2021</u>

(a) It was the case of the Respondent that Appellant had approached the Respondent for advancing a loan of Rs.1 Crore, however, Respondent agreed to lend only Rs.48,00,000/- in cash on 20.03.2014 for the purpose of the business requirements of the Appellant. On 20.04.2014, Appellant approached the Respondent and sought more time to pay back the loan amount. An Agreement dated 21.01.2014 was executed between the parties wherein Appellant agreed to pay interest at the rate of 1.5% p.m. from 20.03.2014.

(b) It was averred that on 30.12.2014 further sum of Rs.3,00,000/- was borrowed by the Appellant and in that context, an

Agreement to Sell dated 30.12.2014 was executed in which it was agreed that in the event of failure of repayment of loan, the property mentioned therein shall be transferred in the name of the Respondent. As per the Respondent, on 19.09.2015 Appellant sought further time of three months to repay the loan and to gain trust, issued post-dated cheques bearing No. 246055 dated 20.12.2015 for a sum of Rs.60,96,000/- and cheque No. 246058 dated 20.12.2015 for a sum of Rs.2,00,000/- towards interest from 20.09.2015 to 19.12.2015.

(c) Respondent asserted that a legal notice was served on the Appellant and he was informed that the cheques shall be presented for encashment. However, when the cheques were presented in the Bank the same were returned unpaid with the remarks 'account closed'. Having no other option to recover the loan amount, Respondent filed the present suit.

(d) Case of the Appellant in the leave to defend application was that the suit was not maintainable under Order 37 Rule 2 CPC, as none of the documents filed with the plaint were admitted by the Appellant and the suit was filed on the basis of false, forged and fabricated documents. It was urged that the Appellant did not owe any amounts to the Respondent and in the absence of any liability it was apparent that the suit was filed by the Respondent only to extort money from the Appellant and unjustly enrich herself.

(e) It was averred that blank cheques and documents were signed by the Appellant under threat of life by the Respondent, for which complaints were made in the concerned Police Station. Appellant also lost blank cheques for which an online police complaint was registered on which no action was taken and therefore the Bank was instructed to stop payment. Appellant also asserted that he did not know the Respondent and had never met her prior to the filing of the suit and therefore, the Agreements relied upon by the Respondent as well as the cheques allegedly issued by the Appellant was forged and fabricated. Appellant submitted that he had a good case on merits and since triable issues were raised, unconditional leave to defend be granted by the Trial Court.

4. After examining the contentious issues raised by the parties to the *lis,* the Trial Court granted conditional leave to defend on deposit of Rs.10,00,000/- in RFA No. 178/2021 and Rs.15,00,000/- in RFA No. 179/2021 in the form of fixed deposits in the Court. The reasoning of the Trial Court in the impugned orders dated 21.05.2019 in both the appeals is common, barring the difference in facts and therefore, to avoid burdening the judgment, relevant part of the order dated 21.05.2019 in RFA No. 178/2021 is extracted hereunder, for ready reference:-

> *"21. The perusal of application for leave to defend would reveal that defendant did not deny the receipt of Rs. 27,00,000/- (Rupees Twenty Seven Lakh Only) as mentioned in loan agreement dated 21.04.2014. Furthermore, defendant has also not denied the receipt of and Rs.3,00,000/- (Rupees Three Lakh Only) against which he issued a two cheques to the plaintiff. The only assertion that is made in the application for leave to defendant is that documents are forged and fabricated and does not inspire confidence as the assertion of forgery has to be specifically pleaded whereas in the application for leave to defendant bald assertion of forgery was made.*
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> *22. Defendant did not deny his signature as appearing on the loan agreement dated 21.04.2014 where it has been clearly recorded that Rs 27,00,000/- (Rupees Twenty Seven Lakh Only) was advanced to him on 20.03.2014 and would carry interest @ 1.5 p.m. and agreement in this respect was signed by him in which defendant had undertaken to repay back the loan amount by 19.9.2015.*
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> *23. It is pertinent to mention plaintiff has averred in the plaint that while signing the agreement the defendant has handed over a security in the form of post dated cheque to the plaintiff. The same is unpresented cheque of Rs. 34,29,000.00/- (Thirty Four Lakhs twenty*

nine thousand only). The plaintiff has also stated that on 30.12.2014 the defendant has also taken Rs.3,00,000.00/- (Rupees Three Lakhs) and has delivered two post dated cheque of Rs. 1,50,000/- (One Lakh Fifty Thousand Only). The plaintiff has also stated that the defendant tendered the cheque bearing No. 806343 dated 20.12.2015 of Rs. 37,67,900,00/- and also gave a cheque bearing No. 806342 of Rs. 1,35,000.00/- towards the interest for the period 20.09.2015 to 19.12.2015 of Rs. 1,35,000.00/-. However, the plaintiff has based his case, only on the basis of these two cheques and loan agreement.

24. It is pertinent to mention that as per the agreement dated 21.04.2014, the total liability of the defendant comes out to Rs. 39,92,900/- till February, 2106. The liability till 19th of December, 2015 as per cheque No. 806343 and 806342 would come out to be Rs. 39,02,900.00/-.

25. That defendant in his application for leave to defendant has only stated that the documents as prepared are forged and fabricated and same has been extorted from him. In the entire leave to defend the defendant has failed to explain as how the documents are forged and fabricated whereas in other part of his application for leave to defendant the defendant took the stand that the blank cheques for lost and it has also been stated by the defendant that the signature were taken on blank papers and cheques were lost in course of business. In this respect the defendant made reference to online complaint dated 20.05.2014 and 01.01.2015 wherein it has been stated that certain cheques were lost whereas in his writing dated 30.03.2015, as annexed with the complaint dated 22.04.2015 the defendant stated that blank cheques were taken from his office forcefully. It is pertinent to note that number of complaints which are annexed with the application for leave to defend were sent by the brother of defendant and not by defendant himself.

26. It also relevant to note that defendant in paragraph 23 of his application for leave to defend in paragraph 23 stated that various communication and acknowledgement were not attached by the plaintiff himself deliberately in the petition. The defendant also took the stand that agreement for sale and purchase was willing done at the best of the plaintiff in the whole deal and it was an investment of black money and such deal by paying the amount in cash. The aforesaid defense would clearly reflect· that defendant had raised contradictory defence in support of his case which are incoherent in nature. The various complaints as filed with the application for leave to defend are online complaint dated 01.01.2015 and 20.05.2014 stating that cheques were lost by defendant. The online complaints give reference of the cheque however, these complaints appear to be self serving in nature and possibility that after taking the loan and after handing over the cheques, the defendant giving the complaint with respect to the same cheques cannot be altogether ruled out.

27. The loan agreement in between the plaintiff and defendant would show that there was monetary transaction in between plaintiff and defendant in which money was advanced by plaintiff to the *defendant. The defendant issued number of cheques to the plaintiff which as per the plaintiff are for the discharge of his liabilities whereas defendant raises a defence that blank cheques containing his signatures were lost and intimation in this respect has been given to the police and even bank has been informed. The defence as raised by the defendant however does not inspire much confidence as except for making the complaint no action has been taking by the defendant. Furthermore, the defendant alleges that he made first filed police complaint on 20.5.2014 that he has lost cheque and again on 01.01.2015 stating that that blank cheques containing the signature were lost and both the story of loss cheques were of similar nature whereas in other complaint dated 22.04.2015 written by his brother Rakesh Maggon, it was stated blank cheques were with plaintiff and was taken in forceful manner giving complete go by to the story of loss cheques as propounded in the application· for leave to defend and in some other complaints. The possibility of defendant filing the complaints cannot be ruled out or the possibility that plaintiff taking number of cheques towards the repayment of loan· cannot be ruled out. However, the nature of relationship does establish that there was monetary transaction in between plaintiff and defendant and defendant has mentioned silence in respect of loan agreement which was signed between plaintiff and defendant.*

28. In the present case, defendant in his application for leave to defend has stated that certain acknowledgement has not been placed on record and without indicating what was the acknowledgement, if the defendant has made payment to the plaintiff or his liabilities were discharged, Defendant has also failed to provide the details with regard to the repayment made by him to the plaintiff.

29. The defendant has taken another stand that transaction is an investment of black money meaning thereby that there is a direct admission on behalf of the defendant that he took payment in cash without disclosing the complete facts.

30. In the case as falling under Order XXXVII CPC, the entitlement of a defendant to contest the case has to be based on defence, in the application for leave to defend, the defendant has avoided to give any reference· for what· reason he took loan amount in cash as noted in the agreement dated 21.04.2014. The loa agreement was also witnessed by two witnesses and was also backed by two cheques in respect of which proceedings under Sec 138 NI Act was also initiated. The reference on the judgment of ***Mahesh Kumar Wadhwa Vs. Bimal Luthra CS (OS) NO. 2083/2006 dated 11.12.2008*** *is totally misplaced as in that judgement Hon'ble High Court has noted certain discrepancies in the revenue stamp and furthermore, in the said judgment, it was noted that in the said judgment that however it is not understood as laying down that Order 37 CPC would not be applicable wherever transaction is in cash. If the cash is explained and supported by other documents, action would lie.*

31. Another defence that was raised by the defendant that *present case does not fall under order XXXVII CPC as there is no written contract, however perusal of agreement dated 21.04.2014 would reveal that that same would come within the definition of Written Contract and creats debtor creditor relationship in between the parties.*

32. The defence as raised by defendant are not substantial, however, considering the fact that defendant has issued number of cheques which as per defendant was lost, the defence as raised though not substantial, the interest of of defendant should not be jeoparadised and the interest of plaintiff is also secured.

*33. In my opinion the case of the defendant would fall in para no 18(c) of IDBI Trusteeship **(supra)** which provides that if defendant raises some triable issues and a doubt is left with the trial judge about the good faith of defendant or genuineness of the triable issues raised the court could enforce conditions both as to time or mode of trial· as well as payment into court or furnishing security.*

34. Keeping in view the abovesaid discussion, the defendant is granted conditional leave to defend and is permitted to defend the suit on the deposit of Rs 10 Lakhs in the form of FDR in the name of Court with an auto renewal method within a period of two months from today.

35. In view of the above, application for leave to defend is allowed to the extent as indicated above."

5. Since the Appellant failed to deposit the amounts directed to be deposited by the Trial Court as a condition for leave to defend and the review applications filed by them were also dismissed, the Trial Court passed the impugned decrees against the Appellant and in favour of the Respondents.

6. Assailing the impugned orders and the decrees, learned counsel for the Appellant reiterated the arguments raised before the Trial Court. Additionally, it was contended that:

(a) It is a settled law that if the Defendant discloses facts which constitute a fair and reasonable defence, unconditional leave to defend must be granted by the Court. ***[Ref.: Sudin Dilip Talaulikar v. Polycap Wires Private Limited and Others, (2019) 7 SCC 577]***. The rule of law is that on a disclosure of valid defence or triable issue if the leave is not granted unconditionally, the grant of leave may be illusory. ***[Ref.: State Bank of Hyderabad v. Rabo Bank, (2015) 10 SCC 521*** and ***Sunil Enterprises and Another v. SBI Commercial & International Bank Ltd., (1988) 5 SCC 354]***. This Court in ***Babbar Vision India Pvt. Ltd. v. Rama Vision Ltd., 2002 SCC OnLine Del 766*** and ***Mahesh Kumar Wadhwa v. Bimal Luthra, 2008 SCC OnLine Del 1330,*** has held that when the Defendant raises a triable issue, leave must be granted unconditionally, whether the defence is legal or equitable and even though ultimately it may not turn out to be a good defence.

(b) The Trial Court failed to call for the income tax returns, source of income of the Respondents, which would have reflected that they did not have the financial means to be capable of extending the huge cash loans as alleged by them. In his cross examination, Respondent/Tejinder Singh, in another matter being Ct. Case No. 19899/2016, had stated before the Court that he earned about Rs.2-2.5 lakhs per month from his vocation/business and was filing ITRs. He also stated that he had about Rs.30-40 lakhs cash in his house. Moreover the standard of living of the Respondents is also evidence of the fact that no loan of the amounts alleged could have been advanced to the Appellant. Respondents did not place their bank accounts showing withdrawal of the amounts allegedly advanced and this Court has held in ***Satish Kumar v. State of NCT of Delhi and Anr., 2013 SCC OnLine Del 2963*** that failure on complainant's part to prove any entry in the bank account showing withdrawal during the relevant period creates a reasonable doubt on the cheque in question.

(c) Appellant had consistently and categorically denied entering into any transactions with the Respondents or signing any Agreements and there was thus no question of admitting that any loan was taken. Reliance on the alleged admission by the Trial Court in para 29 of the leave to defend application was in contravention of the order dated 16.03.2018, whereby an application filed by the Respondents under Order 12 Rule 6 CPC was dismissed in the absence of any admission by the Appellant.

(d) Trial Court overlooked that several police complaints and reminders were made with the concerned Police Station for lost cheques as well as against the Respondents for having the documents and cheques signed at gun point in the year 2012 i.e. even before the alleged transactions.

(e) Appellant does not have the financial capacity to deposit the amounts directed by the Trial Court as a condition for leave to defend and therefore the grant of leave to defend was merely illusory. By review applications Appellant had brought to the notice of the Trial Court that he shall not be in a position to comply with the onerous conditions and this would virtually amount to denial of leave to defend, to which the Appellant has been otherwise held entitled to.

7. *Per contra,* learned counsels for the Respondents contended that:

(a) Leave to defend applications were conditionally allowed on 21.05.2019 but the Appellant did not challenge the said orders and instead filed review applications. Appellant had a remedy of challenging the orders but waited for the decree to be passed and the order dated 21.05.2019 having attained finality cannot be challenged at this stage. Once the leave to defend was granted conditionally and the conditions were not complied with the Trial Court rightly passed the decree as the provisions of Order 37 Rule 3(6) CPC are mandatory which is evident from the use of the word 'shall' by the Legislature.

(b) The defences raised by the Appellant are self-contradictory inasmuch as on one hand it is stated that the documents are forged and fabricated, on the other hand it is stated that the cheques were lost and the third stand is that the signatures were obtained under a life threat on a gun point. Interestingly, it is also the stand of the Appellant that he had not known or met the Respondents before the filing of the suit and therefore, it is not understood how the allegations of life threats were meted out by the Respondents.

(c) It is incorrect that the suits were not based on any written contract since the Respondents have filed two written agreements and five cheques which were dishonoured on presentation with the Banks.

(d) Reliance was placed by the Respondents on the judgment of the Supreme Court in ***Southern Sales and Services and Others v. Sauermilch Design and Handles G_{MB}H, (2008) 14 SCC 457***, wherein the Supreme Court held that where the High Court does not lack the jurisdiction to pass an order with regard to the subject matter of the dispute there is little scope for interference in an order directing deposit of the admitted dues as a pre-condition to grant of leave to defend the suit.

(e) Appellant has not denied in the entire leave to defend application that he had taken any amounts from the Respondents and the only stand was that no amount was due.

Signatures on the cheques and the Agreements were also not denied by the Appellant and the receipt of the loan amounts under the said Agreements was also not disputed. The only assertion in the applications was that the documents were fabricated which did not inspire the confidence of the Trial Court at that stage and therefore, conditional leave to defend was granted. While the Appellant is strenuously contending before this Court that he does not have the financial capacity to pay the amounts directed by the Trial Court, no such stand was taken in the leave to defend application. In ***B.L. Kashyap and Sons Limited v. JMS Steels and Power Corporation and Another, (2022) 3 SCC 294,*** the Supreme Court has held that even if there remains a reasonable doubt on the probability of defence, stern conditions can be imposed while granting leave to defend and denying leave would be ordinarily countenanced only when no triable issue is at all set up by the Defendant.

(f) In ***Nitin Aggarwal v. Praveen Sharma, 2018 SCC OnLine Del 12361,*** this Court has held that a person who takes a loan and gives a cheque to secure the same, cannot argue that the lender must prove that he had the financial capacity to give the loan.

8. I have heard the learned counsels for the parties and examined their rival contentions.

9. Before proceeding to examine the correctness or otherwise of the orders/decrees passed by the Trial Court, it would be important to refer to the law laid down with regard to the grant of leave to defend in a summary suit under Order 37 CPC. In order to avoid prolixity, I may only refer to a judgment of the Supreme Court in ***IDBI Trusteeship Services Limited v. Hubtown Limited, (2017) 1 SCC***

568, wherein the following principles have been culled out:-

> *"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.*
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> > *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.*
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> > *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.*
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> > *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.*
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> > *…"*

10. In ***Sudin Dilip Talaulikar (supra),*** relying on the judgment in ***IDBI Trusteeship Services Limited (supra),*** the Supreme Court reiterated the principles that if the Defendant discloses such facts of a *prima facie* fair and reasonable defence, Court may grant unconditional leave to defend. This concerns the subjective satisfaction of the Court on the basis of materials placed before it. It

was further held that in appropriate cases if the Court is satisfied of a plausible or probable defence and which is not a sham or moonshine defence yet leaving certain doubts in the mind of the Court, it may grant conditional leave to defend. In contradistinction to the earlier subjective satisfaction of the Court, in the latter case there is an element of discretion vested in the Court, which is not absolute but has to be judiciously exercised tempered with what is just and proper in the facts of a particular case. The ultimate object of a summary suit is expeditious disposal of a dispute and the discretion therefore must maintain a delicate balance between the respective rights by not passing an order which may ultimately end up impeding the speedy resolution of the dispute.

11. The question that thus arises before this Court is whether the Trial Court has correctly exercised the discretion by granting conditional leave requiring the Appellant to deposit certain amounts in the Court in the form of Fixed Deposits. From the impugned orders, it is evident that the Trial Court has taken pains to examine the defence set up by the Appellant in the leave to defend applications. It is noted that Appellant has not denied the receipt of money under the Loan Agreements or the signatures appended on them. Material contradictions in the stand taken by the Appellant have been brought forth in the impugned orders. At one place the Appellant has stated that the documents were forged and fabricated to extort money and signatures were obtained at the gun point under a life threat. At another place it is stated that the parties were unknown to each other and had never met prior to the filing of the suits. Insofar as the cheques are concerned, the Trial Court notes that in one of the complaints made to the Police it was stated that blank cheques containing signatures of the Appellant were lost while in another

complaint written by the Appellant's brother it was stated that the blank cheques were forcibly taken from the Appellant.

12. The Trial Court has also returned a finding that the Loan Agreements were witnessed by four witnesses and were backed by four cheques, which were dishonoured and in respect of which the Respondents have initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881. Judgment in the case of ***Mahesh Kumar Wadhwa (supra)*** was distinguished by the Trial Court on the ground that in the said case discrepancies were found in the revenue stamps as also the fact that the transactions were in cash. As far as the objection that the suits were not based on written contracts was concerned, the Trial Court observed that the Loan Agreements would come within the definition of written contracts and the cheques relied upon by the Respondents are instruments on which suit under Order 37 CPC can be premised. Having come to the aforesaid findings, the Trial Court was of the view that since the Appellant has issued a number of cheques and may not have a substantial defence yet in the interest of justice leave to defend be granted, however, since the case of the Appellant falls in para 17.3 of the ***IDBI Trusteeship Services Limited (supra)*** case and there is doubt on the good faith of the Appellant the conditional leave to defend be granted.

13. Having examined the order dated 21.05.2019 in the light of the principles elucidated by the Supreme Court in ***IDBI Trusteeship Services Limited (supra)***, this Court finds no illegality in the said order. The Trial Court has painstakingly noted serious contradictions in the stand of the Appellant with regard to the execution of the Loan Agreements as well as the blank signed cheques. It is also correct that the Appellant never disputed the receipt of the amounts and the only defence in the applications for leave to defend was that nothing was

due towards the Respondents. In light of the defence taken by the Appellant the Trial Court has rightly observed that though a triable issue may arise, however, a doubt is left about the good faith of the Appellant or the genuineness of the triable issues and therefore, rightly relied on para 17.3 of the judgment in ***IDBI Trusteeship Services Limited (supra)*** and imposed conditions for grant of leave to defend. Looking at the facts and circumstances, this Court is unable to come to a conclusion that the Trial Court has incorrectly exercised the discretion vested in it or there is any perversity or infirmity in the findings.

14. Pertinent it is also to note that the leave to defend applications were decided by the Trial Court on 21.05.2019 wherein the conditional leave was granted. The Appellant did not challenge the orders and instead filed review applications. While much has been argued before this Court on the financial condition of the Appellant to contend that imposition of such an onerous condition makes the grant of leave to defend illusory as the Appellant will be unable to pay such huge amounts, interestingly and significantly, there is not a whisper either in the review applications or before this Court as to what is the vocation/job profile/business carried out by the Appellant. It is not disclosed as to what are the monthly earnings of the Appellant enabling this Court to come to any conclusion of the alleged financial crunch. In para 15 of the review applications, all that was stated was that the Appellant did not possess the means to pay a hefty sum and reliance was placed on a judgment in the criminal jurisprudence where the bail conditions were reduced by the Court keeping in mind the financial condition of the accused. Even during the course of hearing, there was not a whisper on the source of livelihood of the Appellant except for a bald assertion that the amounts are exorbitant and the

Appellant is unable to pay the same. Therefore, this Court is unable to find any legal infirmity in the Trial Court decreeing the suits for want of deposits as a pre-condition to grant of leave to defend.

15. At this stage, it is pertinent to mention that at the start of the hearing of the appeals and even during the course of the hearing, repeatedly the Court had asked the learned counsel for the Appellant if the Appellant was ready and willing to deposit the amounts directed by the Trial Court while granting the conditional leave to defend, if further time is granted to do so. However, the learned counsel flatly refused to accept the offer and submitted that he would contest the case on merits.

16. Another argument raised by the Appellant was that the Respondents do not have the financial capacity to have advanced the huge sums of loan as alleged. As an afterthought and for the first time, the Appellant has placed on record of this Court the ITRs filed by the Respondent/Tejinder Singh for the years 2011 to 2016. This argument, in my view, cannot be accepted and does not aid the Appellant. Firstly, none of these ITRs were placed before the Trial Court and secondly, it is a settled law, as rightly contended by the Respondents that if a person accepts loan from a lender, he cannot place the onus on the lender to prove that he had the financial capacity to advance the loans and in this context, reliance has been correctly placed by the Respondents in ***Nitin Aggarwal (supra).***

17. For all the aforesaid reasons, there is no merit in the appeals and the same are dismissed along with pending applications.

JYOTI SINGH, J

FEBRUARY 16th, 2023/*shivam*