



\$~P-1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Decided on: 27th September, 2023*

+ RFA 364/2022

NAVJOT SINGH

..... Appellant

Through: Mr. Mohan Lal Sharma, Advocate.

versus

ALEXANDER DAS

..... Respondent

Through: Mr. Mimansak Bhardwaj, Mr. Pintoo
Thakur & Mr. Sunny Chhonkar,
Advocates.**CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****J U D G M E N T**

1. This appeal, under Section 96 of the Code of Civil Procedure, 1908 ["the CPC"], has been filed by the appellant [defendant before the learned Trial Court], against a judgment and decree dated 11.04.2022 in CS DJ 1109/2018 ["impugned judgment"]. By the impugned judgment, the learned Trial Court has decreed a suit filed by the respondent herein, under Order XXXVII of the CPC, upon the appellant's failure to comply with the conditions upon which leave to defend was granted.

2. The respondent filed the suit before the learned Additional District Judge-01, (South East) District, Saket Courts, New Delhi on 17.07.2018 for recovery of a sum of Rs.6,00,000/-, with *pendente lite* and future interest at



the rate of 18% p.a. from the date of filing of the suit till realization and costs¹.

3. The cause of action asserted in the suit was that the appellant had approached the respondent for a loan, and the respondent had lent and advanced a sum of Rs.6,00,000/- to the appellant in March 2017. The loan was to be repaid within 9 months. The appellant issued a post-dated cheque (cheque No. 444859) dated 08.12.2017, drawn on Punjab National Bank, Branch-Alaknanda, Kalkaji, New Delhi for the sum of Rs.6,00,000/- to the respondent, with the assurance that it would be honored upon presentation. However, the cheque was dishonored on 14.12.2017 due to insufficiency of funds. Despite further assurances, the appellant did not clear the loan, as a result of which the respondent issued a legal notice dated 10.06.2018. The appellant having failed to pay the amount demanded, the respondent instituted the suit.

4. Summons, in the format provided under Order XXXVII of the CPC, were issued on 10.08.2018. The appellant made an application to enter appearance in the suit on 30.11.2018, alongwith an application for condonation of delay of 5 days in entering appearance. The application for condonation of delay was allowed, upon payment of costs to the respondent, by order dated 31.05.2019.

5. On the application of the respondent, summons for judgment were issued on 03.07.2019, pursuant to which the appellant filed an application for leave to defend on 15.07.2019. In the aforesaid application, the appellant denied having taken a loan of Rs.6,00,000/- from the respondent. It was contended that the respondent has, in fact, invested Rs.5,00,000/- with the

¹ Re: Amendment of plaint.



appellant, which has been duly re-paid, at the respondent's request, to one Mr. Ghanshyam Thakur. According to the appellant, two blank cheques were handed over to the respondent in connection with the aforesaid investment, one of which had been misused by the respondent and dishonored by the appellant's bankers.

6. The application for leave to defend was decided on contest by an order dated 02.03.2020. The learned Trial Court granted leave to defend, conditional upon deposit of a sum of Rs.3,25,000/- by the appellant within four weeks from the date of the order.

7. The matter was thereafter taken up on 17.09.2020, when it was recorded that the application for leave to defend had been disposed of by order dated 02.03.2020, by granting conditional leave to defend on deposit of 50% of the suit amount. It was noted that a written statement had been filed by the appellant, and received on the Trial Court's email id at 10:39 A.M. The appellant was unrepresented, but the Court adjourned the hearing for compliance of the direction with regard to deposit of amount until 27.01.2021.

8. In the written statement, the appellant, *inter alia*, averred as follows:

"2. That the Leave to Defend filed by the Defendant in the matter was allowed by this Hon'ble Court on 5.3.2020 and as such, the Written Statement was to be filed within 30 days thereof, i.e. on or before 4.4.2020. However, since 24.3.2020, Courts were not functioning on account of declaration of complete lockdown in the country due to COVID-19 and thus, Written Statement could not be filed during the period. It is, as such, prayed that delay, if any, occurred on account of lockdown is liable to be condoned and the written statement be taken on record."²

² Emphasis supplied.



9. Learned counsel for both parties were present on 27.01.2021, when the Trial Court noted that the conditions imposed by the order dated 02.03.2020 had not been complied with and, therefore, directed that the written statement would not be taken on record.

10. By an application filed on 10.03.2021, the appellant sought reduction in the percentage of the amount to be deposited by him and extension of time for the same. The relevant averments in the application of the appellant, are reproduced below:

“2. That vide order dated 2.3.2020, this Hon'ble Court was pleased to allow Leave to Defend conditionally, with condition that Defendant has to deposit 50% amount in the matter. It is pertinent to mention herein that Defendant was not aware of this condition of deposit of 50% amount, since order dated 2.3.2020 was/is not uploaded on the website of this Hon'ble Court.

3. That however, when the matter was listed for hearing on 27.1.2021, the Counsel for the Defendant appeared before the Court and apprised the Reader that Written Statement had already been filed and copy thereof had also been served upon the Plaintiff through speed post at the time of filing of the Written Statement. Further, since the Ld. P.O. was on leave on 27.1.2021, the Reader informed the Counsel for the Defendant that order dated 2.3.2020 allowing the Leave to Defend is conditional and thus, the Defendant has to deposit 50% amount in the matter.

4. That in view of the above, it is respectfully submitted that entire World, including India were going under lockdown on account of COVID-19 pandemic, which has affected the business, work and livelihood of the people and as such, Defendant was also jobless and had no work to do and is, thus, going under grave financial crunch. As such, as of now, Defendant is not in a position to deposit 50% amount, vide order dated 2.3.2020 and is thus, seeking reduction of percentage of amount being 50% and grant of extension of time to deposit the same.”³

11. The application was rejected by order dated 11.04.2022 and consequently, the impugned judgment and decree was passed in terms of Order XXXVII Rule 3(6)(b) of the CPC.

³ Emphasis supplied.



12. In the present appeal, the appellant contends that the order dated 02.03.2020 was not uploaded on the website of the concerned Court even until 10.03.2021, nor was pronounced on the same date or later on, as a result of which, the appellant was unaware of the condition of depositing 50% of the suit amount. The contents of the appeal, in this regard, are reproduced below:

“3.5. That upon oral enquiry from the Reader, that the Leave to Defend had been allowed, the Appellant also filed Written Statement in the matter on 17.9.2020 along with Application under Order VII Rule 11 CPC. It is pertinent to mention herein that since order dated 2.3.2020 allowing Leave to Defend was not pronounced in court and was also not uploaded on the website of the Court, Appellant came to know of allowing of the Defendant to Defend from the Reader of the concern Court, but only to the extent that “the Leave to Defendant had been allowed”, but not that “the same had been allowed with condition of depositing 50% suit amount”. Copy of Written Statement dated 17.9.2020 alongwith copy of Application under Order VII Rule 11 CPC dated 17.9.2020 is annexed hereto and marked as Annexure A-6 (Colly).

3.6. That upon reopening of the court after lock-down, the matter before the Trial Court came up for hearing on 27.1.2021, when the Trial Court was holding court virtually and not physically in the court room and thus, the Counsel for the Appellant upon visiting the court room, was under impression that the court was on leave.

3.7. That in the first week of March, 2021, upon second enquiry from the Reader, when court was functional physically, it was informed by the Reader that the Leave to Defend was allowed with condition of deposit of 50% of suit amount.

3.8. That subsequently, the Appellant, on 10.3.2021, filed an application under Section 151 CPC, seeking reduction of percentage in depositing 50% of the amount and/or extension of time to deposit the same, in as much as, there was lock down in the country since 24.3.2020, and thus, Appellant was jobless and had no income at all during the year 2020 till few months in 2021. Copy of application under Section 151 CPC dated 10.3.2021 filed by the Appellant is annexed hereto and marked as Annexure A-7.”⁴

⁴ Emphasis supplied.



13. While issuing notice in the appeal on 04.08.2022, this Court granted stay of operation of judgment and decree, subject to the appellant depositing the sum of Rs.3,25,000/- with the Registrar General of this Court within ten days. The amount was duly deposited, and the order of stay was made absolute by order dated 24.07.2023. The appeal was admitted on 12.09.2023 and taken up for final hearing forthwith, with the consent of learned counsel for the parties. The Trial Court record has also been received.

14. I have heard Mr. Mohan Lal Sharma, learned counsel for the appellant, and Mr. Mimansak Bhardwaj, learned counsel for the respondent.

15. Order XXXVII of the CPC provides for a summary procedure for expeditious disposal of suits which fall within the ambit of Order XXXVII Rule 1(2) of the CPC. The summary procedure has been provided in order to obviate protracted procedural delays in defenseless suits⁵. To this end, Order XXXVII of the CPC contains timelines which must be strictly followed⁶.

16. In the present case, the learned Trial Court granted sufficient opportunity to the appellant, to defend the suit. The defendant was permitted to enter appearance belatedly, albeit upon payment of costs⁷. The learned Trial Court further granted conditional leave to defend in favour of the appellant by order dated 02.03.2020.

17. The learned Trial Court correctly applied the principles laid down by the Supreme Court in *IDBI Trusteeship Services Ltd. vs. Hubtown Ltd.*⁸, in this regard. Having found that the case made out by the appellant in the application for leave to defend was not liable to be characterised as

⁵ *Neebha Kapoor vs. Jayantilal Khandwala*, (2008) 3 SCC 770, ¶ 12.

⁶ *Rajni Kumar vs. Suresh Kumar Malhotra*, (2003) 5 SCC 315, ¶ 11, followed by a Coordinate Bench of this Court in *Skylink Construction (P) Ltd. vs. Sachin Mittal*, 2022 SCC OnLine Del 2200, ¶ 19.

⁷ Order of the learned Trial Court dated 31.05.2019.



moonshine or rejected outright, but not adequate for grant of unconditional leave to defend, the learned Trial Court granted conditional leave to defend and imposed a reasonable condition of deposit of Rs.3,25,000/-. The appellant's case of an investment in his business and the cheques having been issued *in lieu* thereof, cannot be regarded as "*defence that is likely to succeed*"⁹ or a "*fair or reasonable defence*"¹⁰, so as to entitle him to unconditional leave. I find no infirmity in the order of the learned Trial Court in this regard.

18. The appellant's case for reduction in the amount and extension of time were on the basis that the appellant was not aware of the condition imposed by the order dated 02.03.2020. As extracted above, even if the appellant's averments are taken to be correct, it is stated in paragraph 3 of the application that the appellant was informed by the Reader of the learned Trial Court on 27.01.2021 regarding the condition upon which leave to defend had been granted. The only ground urged for reduction of the amount of deposit was that the appellant was undergoing financial difficulties as a result of the COVID-19 pandemic. While rejecting the application, the learned Trial Court has observed as follows:

"5. The ground taken by the counsel for defendant is that he was not aware of the order dated 02.03.2020 as order was not uploaded on the website. There is nothing filed by counsel for defendant to show that the order was not uploaded while the counsel for plaintiff has contended that the order was uploaded on the website on the very same day. A report has also been sought from Sr. Personal Assistant of this court about uploading of the detailed order as well as order-sheet, as per which the order-sheet as well as the detailed order were duly uploaded. It is apparent that WS on behalf of the defendant was filed on the court

⁸ (2017) 1 SCC 568.

⁹ Ibid, ¶ 17.1.

¹⁰ Ibid, ¶ 17.2.



email ID at 10.39 am on 17.09.2020. **It is strange that counsel ended up filing the WS on behalf of defendant without having any knowledge about disposal of the application seeking leave to defend and the conditions mentioned therein.** It is also noted that the order-sheet apart from the detailed order were also passed wherein matter was listed for depositing the amount, as directed in the detailed order as well as for filing of WS. So allegedly WS was filed on 17.09.2020, no amount was deposited and nothing was mentioned about the deposit of amount. It is strange that the counsel was in partial knowledge and understanding of the direction which suited his interest and not qua the application mentioned in the very same order. **As far as, the proceedings of 27.01.2021 are concerned, the same are reflected from the order-sheet itself and it is also apparent that the undersigned had duly taken up the matter and was not on leave on that day which is reflected from the order-sheet itself.** Despite having presumably attained knowledge in January, 2021, this application was filed only in the month of March, 2021 and no amount was deposited. There is nothing else filed along with the application to substantiate the allegations raised by the counsel for defendant. The application does not occasion any further deliberation and is dismissed. No ground is made out to allow plea of counsel for defendant to reduce percentage of amount or extension of any further amount to deposit the amount. The matter has been pending since March, 2021 for adjudication of the application. **Till date, the defendant has been able to buy time in the context of having filed this application reflecting his bonafide by fulfilling all conditions at any point of time upon attaining purported knowledge of the order, as claimed.** WS filed on behalf of defendant accordingly cannot be taken in defence by defendant. ”¹¹

19. I do not find any error in the approach of the learned Trial Court in this regard. The written statement filed on 17.09.2020 discloses knowledge of the fact that leave to defend had been granted, although the date of the order has incorrectly been mentioned in the written statement as 05.03.2020. It is not possible to accept that the appellant, who was also represented by counsel throughout, was aware of this part of the order but not of the condition imposed. The learned Trial Court has also recorded upon a report

¹¹ Emphasis supplied.



from the concerned Officer, that the order dated 02.03.2020 was duly uploaded.

20. Significantly, in the appeal, yet another contradictory position has been taken to the effect that the contents of the order were made known to the appellant only in the first week of March 2021.

21. In the aforesaid circumstances, I am of the view that the contentions of the appellant cannot be accepted. He was duly aware of the order dated 02.03.2020, at least at the time the written statement was purportedly filed on 17.09.2020. The subsequent application filed by him, and the contents of the present appeal, are clearly afterthoughts asserted with an objective to evade liability under the impugned decree.

22. In this factual background, the learned Trial Court has followed the procedure of Order XXXVII Rule 3 (6)(b) of the CPC, which entitles the plaintiff to judgment forthwith if the defendant fails to comply with any condition upon which leave to defend has been granted. This procedure has been recognized inter alia in the judgment of the Supreme Court in *Wada Arun Asbestos (P) Ltd. vs. Gujarat Water Supply & Sewerage Board*,¹² and of this Court in *Vikas Bhatia vs. Nikhil Chohan*¹³.

23. For the aforesaid reasons, I do not find any merit in the present appeal, which is dismissed with costs of Rs.20,000/-. The amount of Rs.3,25,000/-, deposited by the appellant in this Court, alongwith interest accrued thereupon, be released to the respondent in partial satisfaction of the decree. The amount released to the respondent will be adjusted in execution proceedings arising out of the impugned decree. The costs awarded by this

¹² (2009) 2 SCC 432, ¶ 15.

¹³ 2014 SCC OnLine Del 3100, ¶ 6.



2023:DHC:7054



judgment, if not paid within four weeks from today, will also be recoverable in proceedings for execution of the impugned decree.

SEPTEMBER 27, 2023
'SS'/'

PRATEEK JALAN, J