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

Date of decision:15.09.2023

\+ CM(M) 1386/2023 & CM APPLs. 43923/2023, 43924/2023

BHARAT CHUGH ..... Petitioner

Through: Mr. Vikram Kumar & Ms. Anushka Kumar, Advocates.

versus

RAJ KUMAR ..... Respondent

Through: Mr. Abhishek Gupta and Ms. Sneh Lata, Advocates.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 43924/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application is disposed of.

CM(M) 1386/2023 & CM APPL. 43923/2023

1. The present petition filed under Article 227 of the Constitution of India impugns the order dated 08.08.2023 passed by the ADJ-11, Central District, Tis Hazari Court, Delhi ('Trial Court') in CS DJ No. 904/2021 titled as "**Raj Kumar v. Bharat Chugh & Ors.**" whereby, the Trial Court allowed the application for grant of leave to defend to the Petitioner subject to the condition that the Petitioner shall deposit the amount of cheques i.e., Rs. 12,00,000/-.

1.1. The Petitioner herein is the defendant no.1 and the Respondent herein is the plaintiff in the suit. The Petitioner is also the proprietor of the firm impleaded as defendant no.2. The suit had been filed by the Respondent under Order XXXVII of Code of Civil Procedure ('CPC') for recovery of Rs. 12,00,000/- alongwith 18% p.a. against the Petitioner.

2. The learned counsel for the Petitioner states that the Petitioner does not have the financial wherewithal to comply with the directions issued by the Trial Court *vide* order dated 08.08.2023 for deposit of sum of Rs. 12,00,000/-.

2.1. He states that the four (4) cheques on which the suit is based were given by the Petitioner as a security to the Respondent and do not amount as an acknowledgment of the liability.

2.2. He states that the surety letters relied upon by the Respondent in the suit are disputed being forged as they do not bear the stamp and signatures of the Petitioner.

2.3. He states that the Respondent has relied upon list of criminal complaint cases filed against the Petitioner. He states that those cases have been filed by a common complainant and are pending trial; and therefore, no adverse inference can be drawn on account of the said cases.

2.4. He states that the amount of Rs. 12,00,000/- received from the Respondent was invested as the sub-broker of SMC Global Securities Ltd. in the future and options segment on behalf of the Respondent. He states that the losses were suffered in March, 2020 and the entire investment was wiped out and in fact, the Petitioner has to recover an amount of Rs. 3,925/- from the Respondent.

3. The learned counsel for the Respondent states that the Respondent

herein had been investing monies directly with the Petitioner since 2011 through banking channels and the quantum of investment had been increased progressively and the principal amount deposited stood at Rs. 12,00,000/- in the year 2018.

3.1. He states that as per practice between the parties, the Petitioner herein used to issue 12 monthly cheques in advance towards liability of interest and the 13th cheque towards principal amount simultaneously. He relies upon the ledger statements issued by the Respondent itself which duly reflects the payment of the interest amount and the deduction of Tax Deducted at Source ('TDS') in favour of the Respondent. He states that the ledger statements issued by the Petitioner were duly enclosed with the surety letters. He has also relied upon the Respondents Form 26AS statement downloaded from TRACES to substantiate the deposit of TDS in his favour.

3.2. He relies upon the entries in the Respondent's bank statement held in Canara Bank and State Bank of India which duly correspond to the entries for payment of interest reflected in the ledger statements issued by the Petitioner herein. He states that these entries duly prove that the principal amount advanced by the Respondent to the Petitioner was as a loan on which the Respondent was entitled to receive fixed income as interest at 14% per annum.

3.3. He states that, therefore, the issuance of the cheques towards principal amount is duly substantiated from the ledger statements issued by the Petitioner herein.

3.4. He states that there is no document on record evidencing that the Petitioner was a sub-broker of SMC Global Securities Ltd. or he invested the monies advanced by the Respondent through SMC Global Securities Ltd. for and/or on behalf of the Respondent herein.

3.5. He further states that the Petitioner has been repeatedly changing his address on the record for purposes of service.

4. This Court has considered the submissions of the parties and perused the record.

5. At the outset, it is noted that initially on 25.08.2023 the counsel for the Petitioner on instructions had stated that the Petitioner is willing to deposit a sum of Rs. 6,00,000/- with the Trial Court; however, on 15.09.2023, the counsel for the Petitioner stated that the Petitioner is unwilling to deposit the said amount. In fact, the counsel for the Petitioner stated that the Petitioner does not have the means to deposit the amount.

5.1. The Petitioner has not disputed that he is facing multiple litigation from several parties for recovery of money including banks.

6. In the facts of this case, the Petitioner does not dispute (i) receipt of the sum of Rs. 12,00,000/- from the Respondent through banking channels; (ii) issuance of the four (4) cheques on which the suit is based; (iii) payment of interest at 14% per annum to the Respondent in the past; and (iv) issuance of monthly cheques in the past, which evidences regular payment of 14% interest to the Respondent.

6.1. It is not in dispute that the said amount of Rs. 12,00,000/- advanced by the Respondent has not been returned by the Petitioner.

7. The only defence offered by the Petitioner is that the that the principal amount of Rs. 12,00,000/- received from the Respondent was invested in the future and options segment in the stock market; which suffered losses in March, 2020 wiping out the said investment. However, the Petitioner has been unable to substantiate the said defence by any documentary evidence recording any such understanding between the parties or contemporaneous

evidence which would corroborate this defence.

7.1. No correspondence between the parties recording such an understanding or proof of any investment in the name of the Respondent through SMC Global Securities Ltd. in the stock market has been placed on record.

7.2. The contention of the Petitioner that the parties had agreed to invest the Respondent's principal amount in the stock market and share the profits earned therefrom is also not substantiated by any cogent evidence.

7.3. In these facts the findings of the Trial Court that the ground raised by the Petitioner in his leave to defend are unconvincing suffers from no infirmity.

8. Thus, in the aforesaid circumstances, where the explanation offered by the Petitioner has not been substantiated by any evidence, whereas the claim of the Respondent of advancing money and payment of interest stand duly evidenced by bank statements, this Court is of the opinion that the directions issued by the Trial Court to the Petitioner for depositing the amount of cheques i.e., Rs. 12,00,000/- suffers from no infirmity and in consonance with the principal settled by the Supreme Court in ***B.L. Kashyap and Sons Limited vs. JMS Steels and Power Corporation and Another***; (2022) 3 SCC 294.

9. Accordingly, the present petition is dismissed. The pending application is disposed of.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 15, 2023/rhc/asb

Click here to check corrigendum, if any