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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ CM(M) 6/2022

MRS RASHMI ANAND & ANR. ...... Petitioner

Through: Mr. Deepak Kohli, Advocate

versus

SH. DILIP KUMAR ...... Respondent

Through: Mr. Gaurav Singh, Ms. Vani Raj Tripathi, Advocates

% Reserved on: 05th September, 2023

Date of Decision: 7th November, 2023

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J:

1. The present petition filed under Article 227 of the Constitution of India impugns the order dated 12.03.2020 passed by the ADJ-02, North District, Rohini Courts, Delhi ('Trial Court') in civil suit No. 48/2018, titled as "**Dilip Kumar v. Rashmi Anand**", whereby the Trial Court granted conditional leave to defend to the Petitioner herein i.e., subject to the deposit of 50% of the amount claimed in the suit in form of demand draft.

1.1 The Petitioners herein are the defendants and the Respondent herein is the plaintiff in the civil suit filed for recovery of an amount of Rs. 90,00,000/- under Order XXXVII of Code of Civil Procedure, 1908 ('CPC').

2. The learned counsel for the Petitioners states that in the plaint the Respondent has pleaded that an amount of Rs. 84,90,000/- was paid to the Petitioners through banking channels and the balance amount of Rs. 5,10,000/- was paid through cash; and the said payments were advanced as

financial help to the Petitioner. He states that, however, there is no mention of the detail of the dates of the payment by the mode of cash.

2.1 He states that the Respondent in the plaint has further averred that there was an alleged settlement between the parties and the Petitioner No.1 herein in pursuance to the said settlement had issued three (3) post-dated cheques of Rs. 30 lakhs each for repayment of Rs. 90,00,000/- ('impugned cheques'). He states, however, admittedly the said alleged settlement is not in writing.

2.2 He states that the Petitioners do not dispute that payments were received from the Respondent in the bank account of the Petitioner No.1. He, however, states that the Petitioners dispute that these payments were made towards any loan.

2.3 He states that, in fact, the impugned cheques were stolen by Respondent from the residence of the Petitioners and a criminal complaint with respect to the theft of the said cheques has been filed. He states that since Petitioner No. 2 and Mr. Ashok Anand (defendant No. 2 in the civil suit) have not issued the impugned cheques, therefore they cannot be made co-defendants in the suit filed under Order XXXVII of CPC.

2.4 He states that as disclosed in this petition a sum of Rs. 56 lakhs has been repaid to the Respondent and therefore, the amount, if any, due and payable is not in excess of Rs. 34 lakhs. He states that these repayments of Rs. 56 lakhs have not been disclosed in the civil suit filed by the Respondent.

2.5 He states this Court *vide* order dated 04.01.2022 had granted a conditional stay of the impugned order inasmuch as this Court permitted the Petitioner herein to deposit a sum of Rs. 15 lakhs before the Trial Court instead of 50% of the suit amount. He states that the Petitioner is willing to abide by the said interim direction and prays that the petition be disposed of in terms thereof to await the adjudication of the final outcome of the civil suit. He states the Petitioner herein has already filed the written statement in the month of February, 2022.

3. In reply, the learned counsel for the Respondent states that the Petitioners herein in their application seeking leave to defend filed before the Trial Court have not made any reference to repayment of Rs. 56 lakhs. He states that the said plea has been raised for the first time in the present petition.

3.1 He states that the receipt of payments of Rs. 56,88,000/- from Petitioners is admitted, however, it forms a part of the separate transactions and has no concern with the underlying transaction of the impugned cheques. He states that prior to the banking of the impugned cheques which are the subject matter of the civil suit and their dishonour, the parties herein had filed criminal complaints dated 19.07.2016 and 14.09.2016 respectively against each other.

3.2 He states that pertinently in the complaint dated 19.07.2016 which was filed against Respondent herein, the Petitioner had not raised any allegation of theft of the impugned cheques before the enquiry officer and the same is merely an afterthought to set-up a false defence in these proceedings.

3.3 He states that the case as set up in the application to leave to defend and in the petition filed before this Court is contrary to each other. He states that Petitioners have set up a new defence inasmuch as the Petitioners while not disputing the receipt of the funds have now sought to allege that the same stood repaid.

3.4 He states that since the payments made through banking channels for a sum of Rs. 84,90,000/- is not disputed, the impugned order of the Trial Court does not require any interference.

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

5. The Respondent in the civil suit at paragraph 3 had filed an elaborate table setting out each of the transactions by which transfers were affected through banking channels in the account of the Petitioners herein and the sum total of the said amount through banking channels is Rs. 84.90 lakhs.

6. The Petitioner herein filed its application to leave to defend dated 22.03.2018 and there was no reply filed to the said paragraph 3 wherein each banking transfer was specifically set out. The principal defence raised by the Petitioners before the Trial Court was that impugned cheques have been stolen and they, in fact, did not admit to any financial transactions with the Respondents.

6.1 It was categorically stated that there have been no financial transactions between the parties which would justify issuance of the cheques by the Petitioners in favour of the Respondents.

6.2 However, in a complete U-turn in the present petition filed before this Court, the Petitioners have duly admitted to the existence of financial transactions between the parties and in fact, admitted that an amount of Rs. 56,88,000/- was paid by the Petitioners herein to the Respondent.

6.3 This admission by the Petitioners to the existence of the financial transactions between the parties belies the entire defence set out by them in their application seeking leave to defend and also casts a shadow on the genuineness of their plea that the impugned cheques were not issued by them or were stolen as alleged.

7. In the opinion of the Court, the order of the Trial Court directing the Petitioners to deposit only the 50% of the amount claimed in the facts of this

case was more than reasonable and it does not require any interference.

8. Since, in the facts of this case the Petitioners have not disputed the receipt of the sum of Rs. 89,40,000/- through banking channels, the impugned order of the Trial Court directing them to pay 50% of the amount claimed is justified.

9. This Court has also perused the Action Taken Report filed by Police Station: Model Town, wherein it has been mentioned that during the enquiry conducted with Petitioner No.1 in pursuance to the complaint dated 19.07.2016, the Petitioner No. 1 had not raised any allegation of the theft of the impugned cheques.

10. The Petitioners are directed to deposit the remaining amount as directed by the Trial Court by its impugned order, within a period of two (2) weeks from today. In case, the Petitioners failed to deposit the remaining amount, the consequences in law shall follow.

11. Accordingly, the present petition is without any merit and is dismissed along with pending applications, if any.

MANMEET PRITAM SINGH ARORA, J

November, 07 2023/msh/aa