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

% ***Date of decision: 18th December, 2024***

\+ **C.R.P. 46/2024, CM APPL. 6754/2024 (stay), CM APPL. 53137/2024 (delay)**

SARVESH BISARIA
S/o Late Sh. S.K. Bisaria
Having office at
113, Lawyer's Chambers
R.K. Jain Block,
Supreme Court of India
New Delhi-110001. .....Petitioner

Through: Mr. Sunil Mittal, Senior Advocate with Mr. Rajiv K. Garg, Mr. Ashish and Lalit Nagar, Advocates.

versus

RAJESH PRASAD
S/o Late Sh. Mahesh Prasad
Director in Sun Business Machine Pvt. Ltd.
B-81, Gulmohar Park, New Delhi-110049 .....Respondent

Through: Mr. Deepak Dahiya, Mr. Lalit Gandas and Mr. Gautam Mehlawat, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

1. Civil Revision Petition under Section 115 of the *Code of Civil*

Procedure, 1908 (*hereinafter referred to as* 'C.P.C.') has been filed on behalf of the Petitioner, Sarvesh Bisaria against the Order dated 19.12.2023, of the learned ADJ, West Tis Hazari Courts, Delhi, ***allowing the Leave to Defend Application filed by the Respondent*** (*defendant in the main Suit*) in a Civil Suit No. 562/2019 under Order XXXVII CPC, 1908 for Recovery of Rs.74,00,000/- filed by the Revisionist/Plaintiff.

2. ***Briefly stated,*** the Plaintiff/Petitioner averred that he is an Advocate and the Defendant/Respondent who is known to him for last 40 years and has family relations, took a loan of Rs.50,00,000/- in cash from the Plaintiff on execution of a Promissory Note dated 29.01.2016 wherein he agreed to also pay the interest on the said amount @18% p.a. and in case of two consecutive defaults, interest was agreed to be paid @24% p.a.

3. According to the Plaintiff, the Defendant paid the interest amount till May, 2017 but thereafter, he stopped paying the interest. On the persistent request of the Plaintiff, the Defendant issued a cheque dated 27.03.2019 for a sum of Rs.50,00,000/- in his favour, which on presentation, was dishonoured for the reason "*payment stopped by drawer*".

4. The Plaintiff issued a Demand Notice dated 16.04.2019, which was replied by the Defendant on 20.04.2019. Thereafter, Legal Notice dated 26.04.2019 ,which was duly replied by the Defendant on 08.05.2019 Thereafter, the Plaintiff filed a Complaint under Section 138 of the *Negotiable Instrument Act, 1881* (*for short 'N.I. Act'*) against the Respondent.

5. Plaintiff also filed the present Suit for Recovery of Rs.50,00,000/- towards the principal and Rs.24,00,000/- as interest for the period from June

2017 till July, 2019.

6. The summons were duly served upon the Defendant/Respondent to enter appearance. Thereafter, on service of Summons for Judgment, *Leave to Defend Application* was filed by the Respondent/Defendant.

7. Essentially, the defence taken by the Respondent was that he is a Director of *M/s SUN Business Machines Pvt. Ltd.*, along with Sh. Naresh Hem Rajani and Sh. Avinash Kumar Browne. It was claimed that as an Advocate of the Company, Plaintiff was dealing with all the cases of the Company, doing consultation work and also doing drafting for him in individual capacity as well as for the Company. He was also empanelled as an Advocate for Gulmohar Park Sport -cum-Community Centre, of which he was in the Managing Committee. He represented the Club before various Forums and during the professional services rendered by the Plaintiff as an Advocate, several signatures were taken by him on blank papers and various *vakalatnamas,* for filing before various Forums. The Defendant claimed that his trust was misused and documents were manipulated. He denied categorically that he had taken any loan in the sum of Rs.50,00,000/- or that he was liable to pay any amount.

8. *The Defendant in his Leave to Defend Application* under Order XXXVII Rule 3(V) CPC had taken the defence that the first major discrepancy arises about the *source of the cheque* amount allegedly given by the Plaintiff as a loan in cash to the Defendant. *The Plaintiff has claimed to have given Rs.50,00,000/- to the Defendant on* 29.01.2016 *and on the same day, a separate loan of Rs.50,00,000/- each had been given to Sh. Naresh*

Hem Rajani and Sh. Avinash Kumar Browne.

9. He has asserted that he has found out that the mother of the Plaintiff, who was the owner of the Property No. D-83, Gulmohar Park, New Delhi-110049, sold it to *M/s Uppal Housing Pvt. Ltd.* for the purpose of development for a sale consideration of Rs. 3.70 Crore paid through three Cheques, but there was no cash transaction in the entire deal. There was no cash money received by the mother in respect of this transaction, which could have been extended as loan to the Defendant.

10. It is further submitted that the Defendant has come to know recently that Smt. Kamlesh Bisaria, the mother of the Plaintiff, has approached this Court by way of the W.P.(Crl.) No. 3171/2018, titled '*Kamlesh Bisaria vs State & Ors.*', asserting that she has been cheated by the Petitioner who has misappropriated her items from her Bank locker. With the directions of this Court, FIR No. 282/2018 under Section 420 IPC has been registered against the Plaintiff. It is thus, submitted that the reading of the Petition and the Orders made therein, establishes that with such hostile relationship between the Plaintiff and his mother, it is highly improbable that she would have executed a Gift Deed in respect of Rs. 3.20 Crores in cash to the Plaintiff. It is asserted that the Defendant has been cheated by the Plaintiff.

11. It is further asserted that the Plaintiff had approached the Defendant around August, 2015 and had told him that he is starting a Committee of Rs.30,00,000/- in which 15 persons are interested. The Defendant was inclined to be a part of the Committee, for which he gave an undated signed cheque bearing No. 094275, drawn on Central Bank of India, Gulmohar Park, New Delhi, as security for an amount of Rs.30,00,000/- in around first

week of October, 2015.

12. In the month of November, 2015, Defendant again enquired from the Plaintiff about the status of the Committee, to which he stated that he is getting a good response and may start a Committee for Rs.50,00,000/-. After few weeks in December, 2015, he was informed by the Plaintiff that he has talked to more than 20 persons, who have shown their interest in the Committee.

13. In around January, 2016, on the asking of Plaintiff, he gave a fresh undated cheque of Rs.50,00,000/- and requested him to return his first undated cheque but the Plaintiff stated that the same has been misplaced during the shifting of the house and as soon as he is able to trace it, he would return the same to the Defendant. He further told the Defendant that he had crossed the cheque as cancelled, to be on the safe side. On the assurance and the promise made by the Plaintiff and the relationship, the Defendant cancelled the said cheque in his Cheque Book as well.

14. After few weeks i.e. around February, 2016, he again inquired from the Plaintiff about the date of commencement of the Committee but was told by the Plaintiff that there was some difficulty in starting the same. He also informed that he has torn the undated second cheque given by the Defendant and assured that he can cancel the same in his cheque overleaf.

15. Over the period of time, the Defendant forgot about the cheque; however, he was shocked to receive the Letter dated 16.04.2019 from the Plaintiff demanding the return of the money. *It was stated that the cheque has been misused by the Plaintiff, which had been given to him in good faith*.

16. The Defendant has further asserted that the Plaintiff has failed to

show the source of cash transaction of such a hefty amount allegedly given as a loan, no details of cash as on 29.01.2016, have been furnished. He had additionally done two similar transactions of Rs.50,00,000/- each on the same day with Mr. Naresh Hemrajani and Mr. Avinash K. Browne respectively, which shows the falsity of the claim of the Plaintiff. *He has prepared and fabricated a Promissory Note, which is unstamped and against the mandate of the Stamp Act and is not admissible in evidence.*

17. The alleged amount of Rs.50,00,000/- in cash is an unaccounted income and no ITR has been filed nor any explanation offered by the Plaintiff. Further, reference has been made to Section 271D and Section 269 SS of the *Income Tax Act, 1961* and the penalty for contravention of the Section 271 D of the *Income Tax Act, 1961*. The Defendants have served a Letter dated 14.06.2019 to Income-Tax Authorities. A Letter dated 14.06.2019 to SHO, Hauz Khas and another Letter to Prime Minister Office.

18. The Defendant has also filed an Application under Section 156 (3) of Cr.P.C. against the Plaintiff, which is pending adjudication.

19. The Defendant has claimed that the cheque was issued in 2016, which have been misused by the Plaintiff in 2019 and the entire case is based on concocted facts. The Plaint suffers from vagueness and ambiguities with regard to the source of amount. The present Suit is nothing but an abuse of the Civil and Criminal machinery of the Court. It is asserted that there are various triable issues, which have been raised in the present Application and the Defendant is entitled to Leave to Defend the Suit.

20. The ***Leave to Defend Application of the Defendant, was allowed by the learned Trial Court*** *vide the impugned Order dated* 19.12.2023 by

observing that triable issues have been raised in regard to the source of cash. As the relationship between the Plaintiff and his mother were not cordial, which is evident from registration of FIR No. 282/2018 against the Plaintiff, its source needs to be ascertained. Moreover, there is violation of the *Income Tax Act, 1961* in so much as the loan is allegedly given in cash. Therefore, the triable issues were raised and the Application for Leave to Defend was allowed.

21. ***Learned counsel on behalf of the Plaintiff*** has contended that the defence taken by the Respondent *herein*, is a moonshine and has no basis. He has taken contradictory pleas in various proceedings in different Courts. The defence taken is contrary to Section 118/120/121/122 and 139 of the *N.I. Act* and also to Section 91 and 92 of the *Indian Evidence Act, 1872*. The Notice under Section 251 of the *N.I. Act, 1881* has already been framed against the Defendant in the Complaint Case under Section 138 of the *N.I. Act, 1881*. The Revision preferred by the Defendant against the Notice, has been dismissed by learned ASJ on 24.02.2021.

22. The learned Trial Court in its impugned Order dated 19.12.2023, observed that the triable issues have been raised in regard to the source of the cash as the relationship between the Plaintiff and his mother, were not cordial, which is evident from registration of FIR No. 282/2018 against the Plaintiff. Moreover, there is violation of Income-Tax Act in so much as the loan is allegedly given in cash. Therefore, the triable issues were raised and the Application for Leave to Defend was allowed.

23. Ld. Counsel for the Plaintiff has submitted that the learned Trial Court has failed to appreciate that the Promissory Note was a typed document

which cannot be manufactured or forged especially when the signatures are in the perfect place on the Promissory Note. Further, the Defendant had admittedly issued a cheque in favour of the Petitioner on 27.03.2019 in discharge of Promissory Note dated 29.01.2016 towards the payment of the principal Loan amount, which has not been considered while granting the unconditional Leave to Defend.

24. The Plaintiff while contesting the Leave to defend Application, had explained that his mother sold a family house in Gulmohar Park and from the consideration amount received by his mother, she gifted him Rs. 3 Crores *vide* Gift Deed dated 29.01.2016. The Loan was extended from the money so received under the Gift Deed.

25. It is argued that the learned has failed to consider that the Gift Deed had been duly executed in favour of the Petitioner by his mother on 29.01.2016, which was much prior to the registration of the FIR. *Pertinently, the Gift Deed has neither been challenged nor revoked* by the mother in any court of law. In fact, the FIR has already been closed by the Police.

26. It has been argued that while not denying the signatures on the Cheque, different explanations have been given to explain the giving of the Cheque to the Plaintiff.

27. Further, The Plaintiff had filed his Assessment Order for the relevant year i.e. 2015-2016. The unconditional Leave to Defend has been granted erroneously by the learned Trial Court on 19.12.2023, which is liable to be set-aside.

28. It has been highlighted that the defendant in the Reply to the Notice sent by the Complainant, had stated that *"I am looking into my record and*

getting things examined about the cheque." In Notice under Section 251 Cr.P.C. in Section 138 proceedings, he stated that "*cheque in question for the purpose of starting contributory Committee.*"

29. In the Leave to Defend Application, the Defendant has asserted that *"the defendant gave undated signed cheques as a security. …..The plaintiff has prepared and fabricated a promissory note"*.

30. In the present Criminal Revision, the plea taken is that *" he signed on blank papers, vakalatnama, cheques so that the respondent does not have bother.*"

31. The four different explanations tendered by the defendants lead to the irresistible conclusion of his defence being blatantly false.

32. It is further submitted that the learned Trial Court erred in observing that the Income-Tax Return has not been filed, which is contrary to the record of the Court as he had filed his Assessment Order for the relevant year i.e. 2015-2016. Also, the Assessment Order dated 23.03.2022 of the Financial Year, has been already placed on record along with the Affidavit. The computation sheets prepared by the Income-Tax Authority showing a total gross of income of Rs.1.5633318 Crore, has also been filed by the Plaintiff, which reflects that the impugned Order is bad in law.

33. It is further argued that the findings of the learned Trial Court that no document has been filed to show that the Petitioner received interest, is also contrary to the record as the Petition along with this Reply to Leave to Defend Application, had filed photocopies of the Receipts issued by the Defendant towards interest till June, 2017.

34. *Learned counsel on behalf of the Plaintiff/Petitioner* has further

argued that the learned Trial Court has not considered that the provisions of *Negotiable Instrument Act, 1881* i.e. Section 118 till Section 139 of the Act, deal with legal presumption relating to Promissory Note and cheque which clearly bars the Respondent to take such pleas in the Leave to Defend. Furthermore, Section 91 and 92 of the *Evidence Act*, prohibit the Defendant/Respondent to take contrary oral stand contrary to the written and signed documents.

35. In the end, it is submitted that the submissions made in the Reply to Leave to Defend Application filed by the Petitioner have not been considered while granting Leave to Defend.

36. Learned counsel on behalf of the Plaintiff/Petitioner has placed reliance on *J. Rajanna Setty vs. Patel Thimmegowdea*, AIR 1998 Kant 86; *Shri Hari Om Gupta vs. IFB Industries Ltd*., RFA No. 501/2014; *Lakshmi Builders vs. Devinder Lakra* in CS(OS) No. 1366/2015; *Sonia Pasricha vs. Rohit Duggal* in CM(M) No. 1019/2018; *Renu Aggarwal vs. Baldev Raj* in R.F.A. 474/2017; *Sheela Sharma vs. Mahendra Pal* in Crl. L.P. No.559/2015; *Maya Jain vs. Yash Chhabra* in CS(OS) No. 2254/2013 and *Roop Kumar vs. Mohan Thedani* in SLP(C) No. 5835/2001.

37. ***Learned counsel for the Respondent/Defendant*** has submitted that according to the registered Sale Deed dated 29.01.2016, the total sale consideration received was Rs. 3.70 Crores and there is no mention of any cash transaction. The Plaintiff has filed his HDFC Bank Statement which reflects that on 06.02.2016, Rs.3 Crores *vide* Cheque No. 295413 and Rs.20,00,000/- *vide* cheque No. 295412 were received by him from his mother and the entire amount of Rs.3.20 Crores was transferred to Sh. Hari

Om Anand on 08.02.2016. It is asserted that the entire sale amount had been transferred to Sh. Hari Om Anand.

38. The Petitioner claimed to have received the cash of Rs.3 crores on the date of Sale i.e. 29.01.2016 *vide* Gift Deed dated 29.01.2016 from his mother as part of the sale consideration. On the same day i.e. 29.01.2016, the Petitioner extended cash loan of Rs.50,00,000/- each to three different persons, namely, the Respondent Sh. Rajesh Prasad and also to Sh. Naresh Hem Rajani and Sh. Avinash Kumar Browne (since deceased) and all three issued separate Promissory Note in favour of the Plaintiff, without indicating the time of repayment. The source from where the Plaintiff allegedly, received this cash is not explained, thereby creating a doubt about having given a Loan to the defendant.

39. Further, learned ADJ has rightly observed that there is no *prima facie* material on record to show that the Plaintiff had received any amount in cash from his mother, which he could have advanced to the Defendant as loan. Moreover, the plaintiff has not filed any Income-Tax Report to prove to prove having given a loan of Rs.50 Lacs in cash.

40. Furthermore, his relationships with his mother are not cordial as reflected from the fact that the mother had got FIR No. 282/2018, Police Station Safdarjung Enclave registered against him. With there being no cordial relations between the plaintiff and his mother, it does not appeal to common sense that mother would have given him cash of Rs.3.20 crores, *vide* a Gift Deed.

41. Further, the Petitioner in his cross-examination in the Complaint Case bearing CC No. 12579/2019, titled '*Sarvesh Bisaria vs. Avinash Kumar*

Browne' under N.I. Act, has admitted that he had filed the copy of Assessment Order dated 23.03.2022 of the Income Tax Officer pertaining to his declared income in the Financial Year 2015-2016, according to which his assessed income was Rs.4,83,320.00/-, which clearly shows that the Assessee could not have advanced a loan of Rs.1.5 Crore to any person.

42. It is further submitted that there are misleading submissions made by the Plaintiff in his various statements and Court proceedings. In the *Reply to Leave to Defend Application*, the Plaintiff had taken a stand that as per his Income Tax Returns filed before the Tax Authorities, the said amount is accounted for and is also shown in his Income-Tax Returns as loan, but in his cross-examination conducted in the Complaint Case bearing CC No. 12579/19 under Section 138 of *N.I. Act*, he has admitted that he had not declared the cash loan of Rs.1.5 Crores as there was no such column in the ITR.

43. Pertinently, the *Application under Section 143-A of N.I. Act* filed by the Petitioner *herein* in Ct. Case No. 7507/2019, has been dismissed by the learned MM by observing that the circumstances point out that cash loan of Rs.50 Lacs could not have been given by the Complainant to the accused.

44. Likewise, in the *Reply to Leave to Defend Application*, Plaintiff had claimed that the payment of interest had been made upto 31.05.2017 but in the Receipt dated 27.01.2016, it has been stated that Rs.2.25 Lacs have been received from the Defendant, Sh. Naresh Hem Rajani and Sh. Avinash Kumar Browne and Sh. Rajesh Prasad as an amount of interest for the month of February, 2016.

45. It is thus, submitted that the contradictory admissions have been made

by the Plaintiff in various proceedings. There are fair and *bona fide and reasonable defences* raised by the Defendant in Leave to Defend Application which has been rightly allowed by the learned ADJ.

46. Reliance has been placed on *B.L. Kashyap & Sons Ltd. vs. M/s JMS Steels and Power Corporation & Anr.*, Civil Appeal No. 379/2022 and *Deepanshu Goel vs. Vijay Trading Company & Ors.*, 2023 SCC OnLine Del 7809 wherein it has been observed that if the Defendant satisfies the Court that there is substantial defence, which is likely to succeed, he is entitled to unconditional Leave to Defend.

47. **Submissions heard and the record perused.**

48. The case of the Plaintiff is that his mother sold the Gulmohar Park property *vide* Sale Deed dated 29.01.2016 wherein the sale consideration is mentioned as Rs. 3.70 Crores, paid through cheque. From this amount, Rs.3.20 Crores had been transferred to the account of the Plaintiff which was given on loan to Sh. Hari om Anand.

49. The Plaintiff had filed a Civil Suit bearing CS(OS) No. 160/2020, titled '*Sarvesh Bisaria vs. Hari Om Anand'* under Order 37 Rule 3(V) of CPC, which has been decreed in favour of the Plaintiff *vide* Judgment dated 12.07.2022.

50. The Plaintiff aside from Rs.3.20 Crores transferred in his account through two cheques, has asserted that his mother had gifted him Rs.3.20 Crores in cash *vide* Gift Deed dated 29.01.2016, copy of which has also been placed on record. It is the case of the Plaintiff that from this amount, he gave loans of Rs.50,00,000/- each to three persons, namely the respondent, Sh. Naresh Hem Rajani and Sh. Avinash Kumar Browne *vide* three separate

transactions.

Source of Money:

51. The *First defence of the Defendant* ***was to question the source of Money from which the Plaintiff allegedly granted as loan to the Defendant***. He has vehemently contended that the entire sale consideration of Rs.3.70 Crores was received in cheque and from this amount, Rs.3.20 Crore as loan was given through bank transaction to Sh. Hari Om Anand. There was no cash competent mentioned in the Sale Deed and therefore, there is no explanation for this cash of Rs.3.20 Crores, which is alleged by the Plaintiff to have been received from his mother.

52. However, it is not in dispute that the money came to the mother after the sale of the Property to *M/s Uppal Builders Pvt. Ltd.*. It may not have been reflected in the Sale Deed, but as per general real estate market practices, it cannot be said that this money in cash was not generated from the sale transaction. Moreover, the money came from the mother who may otherwise, have had financial capacity, and there is no ground to disbelieve the Gift Deed through which cash money had been given to the Plaintiff/Petitioner.

53. Pertinently, the Gift Deed on which the reliance has been placed by the Plaintiff, has never ever been challenged by the mother nor has ever been revoked till date. There is no challenge to the mother having given Rs. 3.20 Crores through two cheques, to the Plaintiff which is not questioned. If she could give this amount by Cheque to the Plaintiff, there is no reason to disbelieve that in addition, she gifted cash amount of Rs. 3.20 Crores to the Plaintiff.

54. *The next argument taken on behalf of the Defendant to question the source of the money, is that* was that there was no question of the mother giving Rs.3.20 Crores in cash to the Plaintiff since the relationship between them was not cordial as is evident from the registration of FIR No. 282/2018 under Section 420 IPC by the mother against the Plaintiff/Petitioner.

55. *Firstly*, this FIR got registered in 2018 while the transaction pertains to 2016. It cannot be taken as a circumstance to claim that the relations between the mother and the Plaintiff, were strained in the year 2016.

56. *Secondly*, FIR pertains to the Bank Accounts and the lockers and nowhere mentions any dispute about the cash amount of Rs.3.20 Crores, which have been given by the mother to the Plaintiff, by the Gift Deed dated 29.01.2016.

57. *Therefore, there is nothing to show that relationship between plaintiff and his mother were not cordial in 2016, when the gift Deed was executed and money given to the Plaintiff.*

58. The ***third contention to challenge the Source of the loan amount*** is that the Income Tax Returns of the year 2015-2016, reflect his income in the sum of Rs. 4,83,320/-, which also does not support the contention of the Plaintiff of having this much money in cash. To buttress this proposition, learned Counsel for the accused has further submitted that the advancing a loan amount of more than Rs.20,000/- in cash is non permissible as per the provisions enshrined in Section 269SS of the *Income Tax Act, 1961*. The instant alleged transaction is of Rs.50,00,000/- claimed to have been given in cash, which cannot be recovered in terms of Section 269SS of the *Income Tax Act*.

59. Section 269SS of the Income Tax Act prohibits any person from taking or accepting from any other person a loan deposit or other specified sum of more than Rs.20,000/- in cash. It reads as under:-

> *"269SS. [Mode of taking or accepting certain loans, deposits and specified sum. [Substituted by Finance Act, 2015 (No. 20 of 2015), dated 14.5.2015.]*
>
> *- No person shall take or accept from any other person (herein referred to as the depositor),* ***any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, if, -***
> *(a)....*
> *(b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits,* ***is twenty thousand rupees or more:*** *[or] [Inserted by Finance Act, 2015 (No. 20 of 2015), dated 14.5.2015.]*
> *(c) ...."*

60. To construe Section 269SS as an Enactment declaring cash transaction beyond Rs.20,000/- as illegal and unenforceable cannot be countenanced.

61. The Apex Court in the case of *Assistant Director of Inspection Vs. A.B. Shanthi,* (2002) 6 SCC 259 held that the object of introducing S. 269 is to ensure that a tax payer is not allowed to give a false explanation for his

unaccounted money, or if he has given some false entries in his accounts, he shall not escape by giving a false explanation for the same. It was further held that it cannot but be said that Section 269-SS only provided for the mode of acceptance, payment or repayment in certain cases so as to counteract evasion of tax. *It does not declare all transactions of loan by cash in excess of Rs. 20,000/- as invalid, illegal or null and void.*

62. Similar observations were made by the Apex Court in the case of *Dilip Chawla Vs. Ravinder Kumar*, 2017 SCC OnLine 9753 that the advancement of loan in cash may entail negative consequences for a party especially an Income Tax assessee, as his having acted in breach of Section 269SS of *Income Tax Act, 1961*, which mandates that no person after the cut-off date, shall take or accept from any other person in loan or re-deposit otherwise by an account payee cheque or an account payee bank draft if the amount is more than Rs.20,000/- and breach of this Section may penalize a person under Section 271D of the Act. Moreover, though there is a penalty attached under the *Income Tax Act,* it does not provide that such transaction would be null and void. *The payer of money in cash, in violation of Section 269SS of the Income Tax Act, can always have the money recovered.*

63. The Apex Court in the case of *Rangappa Vs. Sri Mohan* (2010) 11 SCC 441 upheld the conviction of the accused in the case under Section 138 of NI Act, which was in respect of loan transaction of Rs.45,000/- in cash, by observing that the presumption under Section 139 of NI Act in regard to the existence of a legally enforceable debt, would include within its ambit presumption regarding existence of legally enforceable debt.

64. Reference in this regard be made to the case of *Raj Kumar Rajinder*

<u>*Singh vs State Of Himachal Pradesh And Others*</u> 1990 AIR 1833 wherein it was observed that the contravention of Section 269SS of the *Income Tax Act* will give rise to a penalty which is a separate proceeding under the *Income Tax Act,* but will not invalidate the transaction.

65. In <u>*Shri Shyam Sunder v. Sohan Singh*</u> 2018 SCC OnLine Del 7455 Co-ordinate bench of this Court has held Sections 269SS and 269T do make it compulsory for persons who accept loan or deposits of about Rs. 20,000/- to accept them only through proper banking channels. However, the consequence of not doing so could fasten the parties with penalties under the *Income Tax Act, 1961* which would be pursued by Income Tax Authorities separately.

66. Therefore, the contention of the Defendant that the source of Rs.50,00,000/- loan has not been explained by the Plaintiff, is not tenable.

67. In this context, reference be also made to Section 271D of Income Tax Act which provides for penalty for failure to comply with Section 269SS. It provides that in case of violation of Section 269SS, the persons shall be liable to pay by way of penalty, a sum equal to amount or deposit so taken or accepted. *It is evident that contravention of Section 269SS though visited with the strict penalty under Section 271B of the Act, it does not make such an account or transaction as illegal, void or unenforceable.*

68. Therefore, it is no longer *res integra* that non-disclosure of the money in the Income Tax Returns, it may be violative of Section 269SS of the *Income Tax Act, 1961 but* does not discredit the existence of cash transaction**.** Therefore, non-disclosure of the Loan amount in his Income Tax Returns, may make the Plaintiff liable to pay the amount under Section

271D, but it cannot be said that on this sole ground, that the loan transaction has become illegal or unenforceable.

Explanation for issue of Cheque by the Defendant:

69. The Defendant/accused has not denied giving the cheque with his signatures to the plaintiff, but has given *four different versions* to explain the circumstances in which the cheque was given.

70. The ***first explanation*** finds mention in the Reply to the Notice sent by the Complainant, was that he would look into his records and get things examined about the cheque, which implies that there was no denial to the issue of cheque. The explanation given by the Defendant clearly points out to his admission of having received a loan of Rs.50,00,000/- from the Plaintiff.

71. The ***second explanation*** emerged in Section 138 NI Act Proceedings. In response to Notice under Section 251 Cr.P.C., absolutely new defence was set up that the cheque in question was given for starting a Contributory Committee. It has been explained in detail by the Defendant that the Plaintiff approached the Defendant around August, 2015 and told him that he is starting a Committee of Rs.30,00,000/- along with 15 other interested parties. The Defendant expressed his interest to be a part of the Committee. He asked for an undated signed cheque as security for an amount of Rs.30,00,000/-. The Defendant in good faith gave a signed undated cheque bearing No. 094275, drawn on Central Bank of India, Gulmohar Park, New Delhi, for Rs.30,00,000/-, to the Plaintiff around first week of October 2015, to be a part of the Committee. In the month of November, 2015, the Defendant asked the Plaintiff about the status of the Committee, to which he

replied that he was getting a good response and may start a Committee for Rs.50,00,000/-. After few weeks in December, 2015, he was informed by the Plaintiff that he has talked to more than 20 persons, who were shown their interest in the Committee in around January, 2016. On the request of the Plaintiff, he gave a fresh undated cheque of Rs.50,00,000/- and asked him to return his first undated cheque but the Plaintiff stated that the same has been misplaced during the shifting of the house and shall return it as soon as it is traced. He further told the Defendant that he may cross the cheque as cancelled to be on the safe side. On the assurance and the promise made by the Plaintiff and the relationship, the Defendant cancelled the said cheque.

72. This stand was totally contradictory to his first response in his Reply dated 20.04.2019 to the Notice by the Complainant, that he would look into the records to get the things examined about the cheque.

73. The ***third defence*** emerged in the Leave to Defend Application, wherein the Defendant took a stand that he gave ***undated signed cheque as a security***, but no reason for giving the security has been given; where was the occasion for giving a security is left to anybody's imagination.

74. The ***fourth defence*** is set up in this Criminal Revision, that the Plaintiff was an Advocate and was taking care of the affairs of the Company. He further asserted that the Defendant got him empanelled as an Advocate for Gulmohar Club. The plaintiff had ***taken his signatures on various blank papers and cheque, which he had signed because of the cordial relations.***

75. It is pertinent to observe that this defence had never been taken up by the Defendant in the first instance, but confronted with the cheque having

his signatures, he has conjured different explanations at different times.

76. That the cheque of Rs.50,00,000/- bears his signatures, is duly admitted by him. Further, the Defendant himself has relied on a Receipt dated 29.01.2016, issued by the Plaintiff in acknowledgement of having received Rs.2.25 Lacs from the Defendant, Sh. Naresh Hem Rajani and Sh. Avinash Kumar Browne. It is the case of the Plaintiff that the Defendant along with the other two persons, had been giving the interest as agreed regularly from the date of loan till May, 2017. In fact, this Receipt further corroborates the assertions of the Plaintiff.

Non-payment of Interest:

77. It is the case of the Plaintiff/Petitioner that the Defendant had executed the Promissory note wherein he undertook to pay interest @ 18% p.a.

78. The Defendant along with Sh. Naresh Hem Rajani and Sh. Avinash Kumar Browne, who were Directors in *M/s Sun Business Machines Pvt*. Ltd. (to whom separate loans of same amount had been given), had been giving the interest as agreed regularly from the date of loan till May, 2017. To corroborate the payment of monthly Interest, the Plaintiff has placed on record a Receipt Dated 27.01.2016, in the sum of Rs. Rs.2.25 Lacs issued of payment of Interest for the month of February, 2016, paid on behalf of three aforementioned persons, towards interest. In fact, this Receipt to which again, there is no challenge, corroborates the Payment of Interest on the Loan amount. The Plaintiff, in true earnestness has fairly stated to have received Interest till May, 2017 which is corroborated by this Receipt of 27.01.2016.

Conclusion

79. *To conclude*, the Plaintiff has been able to explain the source from where he got the cash to give a loan of Rs.50 Lacs to the Defendant, which is corroborated by a Promissory Note wherein the parties agreed to the rate of interest and also further supported by the cheque of Rs.50 Lacs, which had been duly issued by the Defendant. The cheque is not denied and the various contradictory explanations given by the Defendant in an attempt to explain this signed Cheque, reflect that in fact, he is trying to create a defence when there exists none.

80. There is no tenable defence taken by the Defendant, to explain the issuance of cheque, which has his signatures. The cheque, therefore, corroborates the claim of the Plaintiff of having given loan of Rs.50,00,000/- to the Defendant.

81. In the light of aforesaid discussion, the impugned Order dated 19.12.2023 allowing the Application for Leave to Defend under Order 37 Rule 3(V) of CPC is hereby, set aside. *Suit of the Plaintiff is decreed in the sum of Rs.74,00,000/- along with pendente lite and future interest @ 6% p.a. payable from the date of institution of the Suit till the date of realisation.*

82. The Civil Revision Petition is disposed of accordingly. Pending Applications, if any, also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 18, 2024/RS