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

% **Date of decision: 5th April, 2024**

+ **C.R.P. 125/2024**

RAKESH CHANDER CHADDA Petitioner
Through: **Mr. C.M. Grover, Adv.**

versus

SHRI VINOD KUMAR AGGARWAL Respondent
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 20321/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

C.R.P. 125/2024 & CM APPL. 20320/2024 (Stay)

1. The petitioner, who is defendant in a suit instituted under Section XXXVII of the Code of Civil Procedure, 1908¹ by the respondent/plaintiff assails the impugned order dated 14.02.2024, whereby he has been granted conditional leave to defend the suit, subject to deposit of Rs. 10,00,000/- in the form of an FDR before the Court within eight weeks of the date of order.
2. Shorn of unnecessary details, the plaintiff/respondent has instituted a suit for recovery of Rs. 13,50,000/- claiming that he had

¹ CPC



2024-0001:2705



advanced a friendly loan of Rs. 10,00,000/- to the petitioner/defendant in cash on 14.05.2018 and the borrowing was confirmed *vide* Promissory Note dated 24.05.2018, which amount was re-payable with interest @ 12% per annum on every month by 7th of each succeeding month. It is stated that petitioner/defendant issued a cheque bearing No. 000140 dated 11.05.2019 for Rs. 10,00,000/- drawn on Kotak Bank, AGCR, Delhi-110092 towards discharge of the loan, which on presentation was dishonoured *vide* bank memo dated 04.07.2019 with the remarks 'funds insufficient'. It is stated that despite serving demand notice dated 20.07.2019 by register post/AD, the amount was not re-paid and besides institution a complaint under Section 138 of the Negotiable Instruments Act, 1881, a suit for recovery has also been filed seeking recovery of Rs. 13,50,000/- including interest @ 12% with *pendent lite* and future interest @ 12% per annum.

3. Evidently, the petitioner/defendant filed appearance in terms Order XXXVII Rule 3(2) of the CPC and on being served with the summons for judgment, filed an application for leave to defend under Order XXXVII Rule 3(5) of the CPC, which came to be allowed subject to the condition that petitioner/defendant shall deposit an amount of Rs.3 lakhs in the form of FDR before the learned Trial Court within eight weeks from the date of order.

4. None appeared for the respondent/plaintiff despite sending advance notice.

5. Having heard the learned counsel of the petitioner/defendant and on perusal of the record, I find that present revision petition is



bereft of any merits. Learned counsel for the petitioner/defendant has vehemently urged that he is a Chartered Accountant by profession and a Senior Citizen and the impugned order is very harsh and passed in a mechanical manner overlooking the facts brought in the application for leave to defend. Such pleas are not worth consideration.

6. It is further vehemently urged that the impugned cheque was not issued for any friendly loan and same has been fabricated as also the Promissory Note dated 24.05.2018. Although signatures on the cheque are admitted, it is stated that writings on the cheque are not by his hand.

7. It is urged that fabrication has been done in the backdrop of the fact that the petitioner/defendant had purchased the shareholding of the company M/s Aggrelios Merchants Pvt. Ltd. from the plaintiff/respondent and his family believing that the plaintiff/respondent and his family were not willing to continue with the business of the company, which company had assets in the form of sundry debtors/loans and total sum of Rs. 22,48,091/- with good prospects of earning in export business of brass scales to United Kingdom and other European countries; and that he purchased 34% of the shareholding of the company for a sum of Rs. 8,50,000/- in his name and in the name of his wife in equal ration and 60% of the shareholding for a sum of Rs. 16,50,000/- was taken by the associates of the petitioner/defendant but later the petitioner/defendant was traumatized on coming to know that the plaintiff/respondent and his family members had already en-cashed all the valuable assets of the company, and therefore, they have caused wrongful loss to him and



his associates to the tune of more than Rs. 25,00,000/- .

8. It is further urged that the petitioner/defendant approached the plaintiff/respondent and asked him to refund the amount towards the assets to the tune of Rs. 21,86,200/- and through the intervention of the common friends, they agreed to give him Rs. 20,00,000/- and out of it a sum of Rs. 10,00,000/- was transferred in his account and a sum of Rs. 10,00,00/- was transferred in the account of his wife. However, during negotiations and meetings the plaintiff/respondent stole the signed cheques from his office and have fabricated the same to lodge a false claim.

9. Learned Trial Court while dealing with the aforesaid plea, observed as under:-

“24. It is improbable that the defendant kept mum for about four years even after knowing about the condition of the company and did not take any steps against the plaintiff and his associates after knowing about the alleged conspiracy. No plausible reason has been given by the defendant which prevented him from filing complaint against the plaintiff from February, 2014 till the date of alleged settlement. Even no reason has been given by the defendant which prevented him from filing any complaint against the plaintiff after receiving summons under Section 138 of N.I. Act.

25. The defendant has admitted his signatures on the cheque in question. However, he has stated that the contents of the cheque in question is not in his handwriting. The defendant has also denied his signatures on the borrowing agreement dated 24.05.2018.

26. In **Amar Singh vs Kuldeep Singh** AIR 1932 Punj. 207, it was held by the Hon'ble High Court of Punjab that a man does not become a money lender because he may upon one or several occasions, lend money to a stranger. There must be a business of money lending and the 'business' imports the notion of system, repetition and continuity to be covered under the definition of money lender under this statute."

27. In "**Sarvesh Bisaria Vs. Hari Om Anand (dead through Legal Heirs)**" in CS(OS) No.160/2020, the Hon'ble High Court of Delhi while dealing with a case in which a practicing Advocate of



2024-0001:2705



Hon'ble Supreme Court of India has lent money to the defendant as well as other persons in that case, held in para no.15 of the judgment which is reproduced as under:

"15 In the present case, it is an admitted position that the plaintiff is a practicing Advocate in the Supreme Court of India and though he may have lent money to people on various occasions, he cannot be said to be in the business of money lending, as provided in the Punjab Act."

28. In the present case, the plaintiff has lent Rs.3 lakhs to the defendant on 24.05.2018 and in the CS No.209/2022, it is also stated by the plaintiff that he has lent Rs.10 lakhs to the defendant on 14.05.2018 through RTGS to the defendant. It is stated by the defendant that apart from the above transactions the plaintiff has also alleged that he has lent Rs.10 lakhs to the wife of the defendant through RTGS/bank transfer and the plaintiff has also filed a separate suit for its recovery which is pending before the Court of Ld. ADJ-01, Shahdara District, KKD Courts, Delhi. It is admitted fact that the plaintiff and defendant are known to each other from the last 25 years and the defendant being a practicing CA also worked for the plaintiff and they were having good family as well as friendly relationship with each other. Though the plaintiff had given loan to the defendant as well as to his wife on two or three occasions, the same cannot constitute that the plaintiff is in the business of money lending, as provided in the Punjab Act. The said Act does not invalidate the genuine transaction of friendly loan given by a person to his friend who is in need on one or several occasions unless it is proved that the person is into a business of money lending and the 'business' imports the notion of system, repetition and continuity to be covered under the definition of money lender as provided in the Act.

29. The Hon'ble Supreme Court of India in the case titled as "**B.L. Kashyap and Sons Ltd. Vs. M/s J.M.S. Steels and Power Corporation and another**" in Civil Appeal No.379 of 2022 (Arising out of SLP(C) No.19413 of 2018), date of decision is 18.01.2022, in para No.17 has held that "grant of leave to defend (with or without conditions) is the ordinary rule and denial of leave to defend is an exception. Para No.17 of the said judgment is reproduced as below:

"17. It is at once clear that even though in the case of IDBI Trusteeship, this Court has observed that the principles stated in paragraph 8 of Mechelec Engineers' case shall stand superseded in the wake of amendment of Rule 3 of



2024-0001:2705



Order XXXVII but, on the core theme, the principles remain the same that grant of leave to defend (with or without conditions) is the ordinary rule; and denial of leave to defend is an exception. Putting it in other words, generally, the prayer for leave to defend is to be denied in such cases where the defendant has practically no defence and is unable to give out even a semblance of triable issues before the Court."

30. In view of the facts and circumstances of the case, law laid down by the Hon'ble Apex Court and Hon'ble High Court of Delhi and above observations and considering the fact that the signatures of the defendant on the cheque in question is not in dispute and the defendant has not filed any complaint since 2014 till date before any authority against the plaintiff in support of his averments mentioned in the application for leave to defend, this Court has doubt about the genuineness of the triable issues, therefore, this Court deems fit to grant leave to the defendant in the present case subject to the condition that defendant shall deposit an amount of Rs.3 lakhs in the form of FDR before this Court within eight weeks from today."

10. A careful perusal of the aforesaid reasoning would show that the learned Trial Court was alive to the fact that a cheque had been issued evidently bearing the signatures of the petitioner/defendant. The plea that the writings on cheque is not in the handwriting of the petitioner/defendant merits no attention at this stage in terms of section 20 of the Negotiable Instruments Act for being an "inchoate instrument". Additionally prima facie there is also a Promissory Note acknowledging the loan amount. These documents were sufficient so as to form an opinion that although the matter should go to trial for the defence being set up by the petitioner/defendant, there are grounds to allow leave to defend conditionally only. Needless to state that the pleas taken by the petitioner/defendant would be required to be proven by him during the course of trial.

11. Before parting with this revision, it may be pointed out that



learned counsel for the petitioner/defendant placed heavy reliance on the decision in the case of **Sudin Dilip Talaulikar v. Polycab Wires Private Limited**² so as to canvass the plea that *where substantial defence is made that is likely to succeed, the defendant is entitled to unconditional leave to defend the suit*. I am afraid the aforesaid case law is of no assistance to the petitioner/defendant. The cited case was one where evidently there was an admission about return of defective goods supplied by the plaintiff and apparent discrepancy in the running account between the parties with regard to exact outstanding dues payable.

12. In view of the foregoing reasons, this Court finds that the impugned order dated 14.02.2024 does not suffer from any jurisdictional error. Accordingly, the present revision petition is dismissed.

13. The pending application also stands disposed of.

DHARMESH SHARMA, J.

APRIL 05, 2024

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² (2019) 7 SCC 577