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

*Judgment reserved on: 03.05.2024*

*Judgment pronounced on: 18.07.2024*

+ **CS(COMM) 458/2022 & I.A. 16235/2022**

**M/S TODAY REALTY PRIVATE LIMITED AND ANR.**

..... Plaintiffs

Through: Ms. Damini Chawla, Advocate.

versus

**GUNVEEN SINGH**

..... Defendant

Through: Mr. Lakshay Joshi, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

### **J U D G M E N T**

#### **I.A. 4745/2023 and 4746/2023**

1. By way of the present application, the defendant is seeking grant of leave to defend in the suit for recovery filed by the plaintiffs under Order XXXVII of Code of Civil Procedure, 1908 (“CPC”).
2. I.A. 4746/2023 seeks condonation of 56 days delay in refiling the leave to defend application.
3. The prayers sought by the plaintiffs in the said suit are as follows:-  
*“A. Pass a money decree in favour of the Plaintiff No. 1 for a sum of Rs. 5,74,78,068/- (Rupees Five Crore Seventy Four Lakhs Seventy Eight Thousand and Sixty Eight only) along with pendente lite interest and future interest at the rate of*



*15% per annum; and/or*

*B. Pass a money decree in favour of the Plaintiff No.2 for a sum of Rs. 1,01,24,863/- (Rupees One Crore One Lakh Twenty-Four Thousand Eight Hundred Sixty Three) along with pendente lite interest and future interest at the rate of 15% per annum; and/or”*

4. Brief facts as per the plaint are that the plaintiff No.1 is private limited company and is engaged in purchase, sale, construction and re-development of property in New Delhi. The plaintiff No. 2 is a Limited Liability Partnership (LLP) under the provisions of the Limited Liability Partnership Act, 2008 and the present suit is filed by Ankur Arora, director of plaintiff No. 1 and partner of plaintiff No. 2.
5. In the year 2015, the defendant approached the plaintiffs with proposal for collaboration/construction. In February, 2016, the defendant represented to Mr. Subhash Arora and Mr. Ankur Arora that he was sole, absolute and legal owner of the following properties:

*“(i) Agricultural land admeasuring 2 bighas out of 8 Bighas 11 Biswas comprised in Khasra Nos. 1572 (3-18) and 1731 47Min (4-13) situated in the revenue estate of Village Chattarpur, Tehsil Mehrauli (now Saket), New Delhi with all rights of ownership, possession, easements enjoyed in respect thereof, more specifically described in the site plan marked as 'Schedule A'.....(property-1)*

*(ii) C-326, Defence Colony, New Delhi-1 10024 along with built-up structure constructed thereupon .....(property-2).”*
6. Defendant assured that both the properties were free of encumbrances



and offered to sell property-1 and enter into a collaboration agreement for redevelopment of property-2.

7. On 30.04.2016, an agreement to sell (“*Agreement-1*”) was entered into wherein Mr. Subhash Arora agreed to buy the property-1 from the defendant for a total sale consideration of Rs. 7.5 crores. At the time of execution of Agreement-1, advance payment of Rs.1,00,00,000/- was made to the defendant in the following manner:-

| S. No. | Mode and Particulars                                                              | Amount (in rupees)   | Date       |
|--------|-----------------------------------------------------------------------------------|----------------------|------------|
| 1.     | Cheque bearing no. 194350 dated 05.05.2016 drawn on Axis Bank, Chittaranjan Park. | 70,00,000/-          | 05.05.2016 |
| 2.     | Cash                                                                              | 30,00,000/-          | 30.04.2016 |
|        | <b>Total</b>                                                                      | <b>1,00,00,000/-</b> |            |

8. Another sum of Rs. 50 lakhs was paid to the defendant as under:-

| S. No. | Mode and Particulars                                                              | Amount (in rupees) | Date       |
|--------|-----------------------------------------------------------------------------------|--------------------|------------|
| 1.     | Cheque bearing no. 194370 dated 24.05.2016 drawn on Axis Bank, Chittaranjan Park. | 25,00,000/-        | 24.05.2016 |
| 2.     | Cash                                                                              | 25,00,000/-        | 21.05.2016 |



|  |              |                    |  |
|--|--------------|--------------------|--|
|  | <b>Total</b> | <b>50,00,000/-</b> |  |
|--|--------------|--------------------|--|

9. Under Agreement-1, the defendant was to execute and get the necessary transfer documents in favour of Mr. Subhash Arora or his nominee on or before 30.08.2016. Further, Mr. Subhash Arora had right to nominate or assign the Agreement-1 to any persons, firm, body corporate, association of persons. Mr. Subhash Arora nominated plaintiff No.1 as his nominee. The plaintiff No.1 has filed its bank statement which shows that the above mentioned cheques were honoured on presentation.
10. In respect of property-2, on 03.05.2017, defendant and plaintiff No. 2 entered into an Collaboration Agreement (“*Agreement-2*”) wherein it was agreed that the structure at property No. 2 will be demolished and redeveloped at the cost and expense of plaintiff No. 2.
11. In addition to the cost of construction, plaintiff No. 2 had agreed to pay a sum of Rs.12,50,00,000/- to the defendant and the plaintiff No. 2 would be the owner of first floor, second floor, third floor, terrace rights over the third floor and the entire stilt except space for parking two cars and one utility with common W.C. in the stilt area as demarcated for defendant, of the newly constructed/redeveloped property-2. The plaintiff No. 2 was also to own 67.5 % of undivided, indivisible and impartible rights in the land underneath property-2.
12. Further, the defendant was to own basement, ground floor, space of parking of two cars and for one utility with common W.C. in the stilt area alongwith use of common areas, open areas and 32.5% undivided, indivisible and impartible rights in the land underneath



property-2.

13. Out of the total sale consideration of Rs. 12.5 crores, an advance payment of Rs. 3 crores was made to the defendant in the following manner:-

| S. No. | Mode and Particulars                                                             | Amount (in rupees) | Date                            |
|--------|----------------------------------------------------------------------------------|--------------------|---------------------------------|
| 1.     | Cheque no. 185639 drawn on Axis Bank, Chittaranjan Park by Plaintiff No. 1       | 75,00,000/-        | 03.02.2016                      |
| 2.     | Cheque no. 194306 drawn on Axis Bank, Chittaranjan Park by Plaintiff No. 1       | 20,00,000/-        | 07.03.2016                      |
| 3.     | Cheque no. 000036 drawn on Kotak Mahindra Bank, Malviya Nagar by Plaintiff No. 2 | 75,00,000          | 06.05.2017                      |
| 4.     | Cash                                                                             | 1,30,00,000        | 30.01.2016<br>and<br>03.05.2016 |
|        | <b>Total</b>                                                                     | <b>3,00,00,000</b> |                                 |



14. On perusing the bank statement of plaintiff No. 1 and plaintiff No. 2, the above said cheques on presentation were honoured. Thus, the plaintiffs made a total payment of Rs. 4.5 crores to the defendant under the two agreements.
15. As the defendant was unable to comply with the obligations under the Agreement-1 and Agreement-2 and was no longer ready and willing to proceed, the defendant agreed to return a sum of Rs. 5 Crores to the plaintiffs including Rs. 50 lakhs as interest on principal amount of Rs4.5 crores.
16. To discharge his liability, the defendant issued two cheques bearing No. 32637 dated 20.05.2018 drawn on Axis Bank for a sum of Rs.50,00,000/- and another cheque bearing No. 061724 dated 19.06.2018 drawn on Axis Bank, Jasola for a sum of Rs.75,00,000/- both in favour of plaintiff No 2. The said cheques were dishonoured on presentation with remarks "*funds insufficient*" and "*drawer signature differ*".
17. It is further stated in the plaint that on 14.08.2018 and 24.08.2018, the defendant made payment of Rs. 50 lakhs by RTGS to the plaintiff No. 2. Thereafter, the defendant handed over two more cheques bearing no. 061725 dated 05.09.2018 drawn on Axis Bank, Jasola for a sum of Rs. 2,05,00,000/- and another cheque bearing No. 061726 dated 05.09.2018 drawn on Axis Bank, Jasola for a sum of Rs. 1,70,00,000 both in favour of plaintiff No. 1. However, the said cheques were also on presentation dishonoured on 06.09.2018 with remarks "*payment stopped by drawer*"



18. The defendant made a payment of Rs. 10,00,000 to plaintiff No. 2 and Rs. 6,00,000 to plaintiff No. 1 on 18.04.2019 and 16.05.2019 by RTGS transfer. Hence, according to the plaintiffs, a sum of Rs. 4.34 crores is still outstanding and is covered by the cheques drawn by the defendant which on presentation were dishonoured. Hence, the present suit.
19. *Vide* Order dated 17.08.2022, this Court issued summons to the defendant on the plaintiffs taking requisite steps.
20. The plaintiffs filed an application bearing No. 16235/2022 under Order XXXVII Rule 3(4) seeking issuance of summons for judgment. *Vide* Order dated 27.10.2022, this Court issued notice in the said application.
21. The defendant was served with the summons for judgment on 10.11.2022. Thereafter, the defendant filed leave to defend application on 21.11.2022 i.e. within the period prescribed under Order XXXVII Rule 3 of CPC *vide* Diary No.1916898/2022.
22. Subsequently, learned counsel representing the defendant filed a fresh leave to defend *vide* Diary No. 287743/2023 on 16.02.2023 which is the present application. Along with the said application, another application was also filed bearing I.A. 4746/2023 seeking condonation of 56 days delay in refiling/fresh filing of leave to defend application. The only reasons stated in the said application is that the previous counsel was unable to provide the list of defects and hence the delay.
23. According to me, no plausible reason has been given for the delay in filing the leave to defend application. It appears that the new counsel for the defendant was casual in approach. The only reason given is in



para 2 which reads as under:-

*“2. That there is a delay of 56 days in refiling of application of leave to defend as the previous counsel was unable to provide the list of defects. Thus the said defects were not cleared.”*

24. Order XXXVII of CPC is a complete code in itself and timelines provided are mandatory in nature. The averment in the application seeking condonation is made in a casual manner without explaining the defects or as to how the present counsel or the defendant communicated with the earlier counsel. It is also pertinent to mention that previous leave to defend application was filed within time which is not on record as the defects marked by the registry were not cured and hence for all practical purposes, the leave to defend application filed on 16.02.2023 is a fresh filing.
25. In addition, if the above said reason for condonation of delay is to be accepted, a situation would emerge that defendant under Order XXXVII suit will engage a counsel, file a leave to defend application and subsequently, change his counsel and file another leave to defend application beyond the time prescribed under Order XXXVII Rule 3(5) of CPC on the pretext that the earlier counsel did not communicate the list of defects to the new counsel. If that were to be permitted, the strict timelines provided under Order XXXVII would lose its significance. The judgement of *Escorts Finance Ltd. v. Nielcon Ltd., 2000 SCC OnLine Del 39* has observed as under:-

*“In DCM Financial Services Limited (supra), it has been laid down that the test whether or not a cause is sufficient is*



*to see whether delay could have been avoided by the party by the exercise of due care and attention as nothing shall be deemed to be done bona fide or in good faith which is not done with due care and attention. The same test has also been laid down in the case of Nirayu Pvt. Ltd. v. Mohan Lal (supra).*

*The principles thus to be taken into consideration for condonation of delay would be: (1) while liberal construction is to be given to the words “sufficient cause” to advance substantial justice, liberal construction, however, is available only when no negligence or inaction or want of bona fide is imputable to the party invoking Section 5; (2) want of due care and attention or want of due diligence negatives the existence of sufficient cause; (3) burden is on the party seeking extension of limitation to show that he acted with care and attention and was not negligent or careless; (4) each case is to be seen on its facts and circumstances and the circumstances to be “sufficient cause” must appear to the Court to be reasonable having regard to the facts and circumstances of the case.*

*For determining whether “sufficient cause” in the circumstances exists or not, the object of the enactment wherein this discretion is sought to be exercised would also be a relevant consideration.*

*The provisions of Order 37 of the Code are a special enactment which applies to certain categories of cases. The*



*object for this enactment is that the defendant does not unnecessarily prolong litigation and prevent the plaintiff from obtaining an early decree in a class of cases where speedy decisions are desirable in the interest of trade and commerce.*

*Under summary procedure of Order 37, the plaintiff is required to serve the defendant with the summons of the suit. Such summons has to accompany copy of the plaint and other relevant documents relied by the plaintiff. On receipt of the same, defendant has to make appearance within 10 days of such service and then the plaintiff has to take out summons for judgment to the defendant and then the defendant has to make an application seeking leave to defend within 10 days of such receipt. There will obviously be sufficient time gap between the two steps to be taken by the defendant. The first step puts the defendant to notice to be ready for taking steps for leave to defend in case he wants to contest the suit of the defendant in time and for that purpose he is equipped with copy of the plaint and other documents relied in support by the plaintiff. The question thus is whether the defendants have acted with due care and diligence or have been negligent and careless in approaching the Court.”*

- 26.** A perusal of the reasons shows that the defendant had not acted with due care, diligence and bonafidely and had been callous in approaching the Court. Hence, I am of the view that the leave to



defend application filed on 16.02.2023 is beyond the period of limitation and the leave to defend application is liable to be dismissed on this ground alone. However, having said that, I am also proceeding to decide the leave to defend application on merits.

**27.** The defendant in his leave to defend application has stated as under:-

- a)** Defendant took interest free friendly loan of Rs. 95 lakhs from Mr. Subhash Arora against which various blank cheques were given as security.
- b)** With respect to agreement-1, it is stated that Rs. 1.5 crores have been received as a part payment.
- c)** With respect to agreement-2, the defendant has stated that only Rs. 75 lakhs have been received.
- d)** As Mr. Subhash Arora failed to comply with the obligations as mandated in both the agreements, Cancellation Agreements dated 28.08.2018 were executed by cancelling both the agreement-1 and agreement-2.
- e)** Defendant refunded back Mr. Subhash Arora a sum of Rs. 3 crores and the remaining balance was to be paid in next 6 months for which the defendant gave 3 blank cheques as a security.
- f)** Cash amount was also paid to Mr. Subhash Arora for which cash receipts were given. Further Mr. Subhash Arora assured the defendant that the cheques would be destroyed but unfortunately they were misused.
- g)** A balance amount of Rs. 22 lakhs was also paid to Mr. Subhash Arora as promised.



**28.** As per leave to defend application, the following triable issues are raised by the defendant:-

*“b) That the Suit is misconceived for misjoinder of parties as the answering defendant never came in any agreement with the present plaintiff but with Sh. Subhash Arora in his personal capacity and the Plaintiffs have no right to file a common suit against the answering Defendant as the Plaintiffs to the present suit are Two separate entity and the subject matter of the Suit are entirely different.*

*h) That the present suit is not maintainable and liable to be dismissed at the outset as Mr Ankur Arora has no authority to file and institute the present suit in the absence of any authority or delegation of power in his favour.*

*i) That the Liability as stated in the Complaint is not crystallized which is prime requirement of the Suit under Order XXXVII of the Code of Civil Procedure as there is no agreement for the claim of interest. The captioned suit is based on Cheque issued by the answering defendant in favour of the Plaintiffs and the valuation with inclusion of interest calculated annually is not within the purview of Suit under Order XXXVII of the Code of Civil Procedure. The claim of interest unsupported by any Written contract would not ex-facie come under the provisions of Order XXXVII CPC. Hence the suit is not maintainable and liable to be dismissed.*

*k) That the Defendant has no liability against the Plaintiff*



*no. 1 to the Suit, the liability which occurred under the agreement annexed is in favor of Late Sh. Subhash Arora which is already discharged by the answering Defendant.”*

29. Mr. Joshi, learned counsel appearing on behalf of the defendant states that the certain payments have been made to the plaintiff and hence the amount which due and payable to the plaintiffs is a triable issue. Therefore, unconditional leave to defend must be granted to the defendant. He also states that the blank cheques without date and figures were handed over in January, 2016. He states that the agreement-2 filed by the plaintiffs is not the correct collaboration agreement and has filed another collaboration agreement dated 03.05.2017 for the property-2 of the same date.
30. He draws my attention to the collaboration agreement dated 03.05.2017 filed by the defendant and two purported cancellation agreements dated 28.08.2018. The first cancellation agreement is executed between the defendant and plaintiff No. 2 in which the agreement-2 is cancelled by giving Rs. 50 lakhs through banking transaction and Rs. 15 lakhs by cash and further sum of Rs. 10 lakhs is to be paid by RTGS, DD or cheque. The second cancellation agreement is executed between the defendant and Mr. Subhash Arora in which agreement-1 is cancelled by giving Rs. 2.30 crores in cash to Mr. Subhash Arora.
31. Ms. Chawla, learned counsel appearing on behalf of the plaintiff, at the outset, denies the execution of both the cancellation agreements on the ground that the signature of Mr. Subhash Arora is forged by the defendant in the cancellation agreements which can be matched from



agreement-1 and agreement-2. She further submits that the defendant has categorically admitted the execution of both the agreement-1 and agreement-2.

32. She relied on ***Mechelec Engineers & Manufacturers v. Basic Equipment Corporation, (1976) 4 SCC 687*** to submit that the defence set up by the defendant is sham and illusory and Mr. Subhash Arora had full right to nominate or assign the agreement-1 in favor of any person and Mr. Subhash Arora has rightly nominated Mr. Ankur Arora. Further there is no mention of the blank cheques in the cancellation agreements.
33. She also relied on ***N.S. Atwal v. Jindal Steel and Power Ltd., 2013 SCC OnLine Del 3902*** to submit that the plaintiff is not debarred from claiming interest under Order XXXVII of CPC.
34. I have heard learned counsel for the parties.
35. The Hon'ble Supreme Court in ***IDBI Trusteeship Services Ltd. v. Hubtown Ltd., (2017) 1 SCC 568*** has reiterated the principles regarding grant and refusal of leave to defend application. The relevant extract reads as under:-

*“17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corp., (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36] , as follows:*

*17.1. If the defendant satisfies the court that he has a*



*substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.*

*17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.*

*17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.*

*17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.*



*17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.*

*17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.”*

- 36.** From the above, it emerges that while hearing leave to defend application, the Court has to only scrutinize the leave to defend application and to see if the defendant has raised any triable issue. If so then unconditional leave to defend must be granted and if the defence is frivolous and vexatious, the Court will refuse to grant leave to defend and the plaintiff will be entitled to the judgement forthwith.
- 37.** Keeping the above principle in mind, I am proceeding to decide the matter on merits.
- 38.** In the present case, there is no denial as to the execution of the agreement-1, execution of the Collaboration Agreement dated 03.05.2017 and the amount of Rs. 1.5 crores received by the defendant under agreement-1.
- 39.** As regards to the agreement-2 i.e. Collaboration Agreement dated 03.05.2017, the defendant admits the receipt of Rs. 75 lakhs only. The defendant has denied the execution of the agreement-2 propounded by the plaintiffs and has propounded a different agreement-2 showing the



amount due and payable as Rs. 17 crores for the plaintiff No. 2's allocation. However, the Collaboration Agreement dated 03.05.2017 propounded by the defendant is silent on all material particulars except Rs. 17 crores. Further, there is no details as to how Rs. 75 lakhs has been paid to the defendant by the plaintiff No. 2 (a fact which is admitted by the defendant in his leave to defend application).

40. On the other hand, agreement-2 filed by the plaintiffs shows a sum of Rs. 3 crores written in the agreement out of which Rs. 1.7 crores is paid through banking channels. The defendant has admitted the amount of Rs. 95 lakhs but has taken a defence that the same was a friendly loan advance by Mr. Subhash Arora which is not supported by any documentary evidence. Hence, I am of the belief and view that the document propounded by the defendant i.e. collaboration agreement dated 03.05.2017 is false and fabricated and has been set up only for the purposes of raising a defence to prolong the present suit.
41. Defendant in his leave to defend application has stated both the agreements i.e. agreement-1 and agreement-2 were cancelled in view of execution of Cancellation Agreements dated 28.08.2018 and has also stated that a sum of Rs. 3 crores was refunded back to Mr. Subhash Arora and the remaining balance was to be paid in 6 months for which 3 blank cheques were issued as security. The relevant paragraph reads as under:-

*“f) As per the cancellation of both the agreement. The sum of Rs 3 crores were refunded back to Sh. Subhash Arora and the answering defendant assured Sh. Subhash Arora that the*



*balance payment will be made within a period of 6 month for which answering defendant gave 3 blank cheques as security. As Mr Subhash Arora were adamant in taking the balance in cash. The answering defendant had paid Mr Subhash in cash for which cash receipts were also given by him to answering defendant.”*

- 42.** As per the cancellation agreement between the defendant and plaintiff No. 2, a sum of Rs. 65 lakhs has already been paid and as per the cancellation agreement with Mr. Subhash Arora, a sum of Rs. 2.30 crores has also been paid totalling to Rs. 2.95 crores and a balance amount is to be paid which is contrary to the stand taken by the defendant in his leave to defend application wherein it is stated that Rs. 3 crores have been paid but as per defendants own document only Rs.2.95 crores have been paid. There is no mention of time to pay the balance amount whereas 6 months’ time is stated in his leave to defend application.
- 43.** What weighs with me is that both the so called cancellation agreements are dated 28.08.2018. The said cancellation agreements do not even mention that there were some security cheques issued by the defendant as stated by the defendant in his leave to defend. The fact that the mention of the security cheques have not been made in the cancellation agreements assumes significance. On the date of purported cancellation agreements, the two cheques bearing Nos. 32637 and 061724 had already been bounced on 21.06.2018.
- 44.** Further, if the so called cancellation agreements were executed on 28.08.2018, there was no need for the defendant to issue two more



cheques for Rs 2.05 crores and Rs. 1.70 crores. Another important aspect is that the defendant has not stated anywhere in his leave to defend application as to how he has arranged a huge sum of Rs. 2.45 crores in cash. It was incumbent on the defendant while raising a triable issue to show as to how the defendant possessed such huge amounts of cash or arranged for the same. Hence, I am of the view that the entire defence set up by the defendant is sham, frivolous and moonshine.

45. Another defence taken by the defendant in his leave to defend application is that the agreement-1 was executed between the defendant and Mr. Subash Arora in his personal capacity, thus plaintiff No. 1 has no right to file the suit. The said contention is meritless as Mr. Subhash Arora was at liberty to nominate any person and the defendant would have no objection to it. The relevant clause from the agreement-1 reads as under:-

*“That the SECOND PARTY have full right to nominate or assign this Agreement to Sell in favor of any person or persons, be it a firm, body corporate or association of person and the FIRST PARTY shall have no objection to it.”*

46. In this regard, Mr. Subhash Arora has nominated plaintiff No. 1 as its nominee. The present suit is filed by plaintiff No. 1 through its director Mr. Ankur Arora, documents to this effect has been placed on record which shows that Mr. Ankur Arora is director of the plaintiff No. 1. Hence the suit filed by the plaintiff No. 1 is maintainable against the defendant.
47. Defendant in his leave to defend application has stated that the



plaintiffs are not entitled to any interest as the suit is based on cheque and the valuation with inclusion of interest is not within the purview of Order XXXVII of CPC. The said defence is no more *res integra*. This Court in ***Sanjay Kohli v. Vikas Srivastava, 2012 SCC OnLine Del 2253*** has held as under:-

*“11. The other contention raised by the counsel for the defendant no. 1 is that the amount of interest cannot be claimed in a summary suit under Order XXXVII is also devoid of any merit. This issue is no more res integra as the settled legal position is that even if there is no agreement between the parties to claim any specified interest, the plaintiff is entitled to include the interest amount in a summary suit in terms of Section 80 of the Negotiable Instrument Act read with Order XXXVII of CPC. It will be relevant here to refer to the judgment of this court in the case of S.K. Malhotra v. Man Mohan Modi<sup>166</sup> (2010) DLT 723 : 2009 (113) DRJ 802 wherein the court while granting the interest in a summary suit held as under:*

*“4. In the case of Secretary, Irrigation Department, Government of Orissa v. G.C. Roy reported as: AIR 1992 SC 732, the Supreme Court held that a person is entitled to the payment of interest on the principal amount and the security deposit illegally retained, on the ground that the person deprived of the use of money to which he is legitimately entitled, has a right to be compensated for the deprivation, call it by any*



*name. Even in the present case, it cannot be disputed that the appellant was deprived of the use of the money to which he was legitimately entitled and thus he had a right to be compensated for the period of deprivation at least from the date of institution of the suit till the date of passing of the decree.”*

*As manifest from above, the plaintiff would be entitled to the amount of interest even if there is no term regarding payment of interest stipulated between the parties. In the light of the above discussion, this court does not find any merit in the present application and the same is hereby dismissed.*

*The suit of the plaintiff is accordingly decreed for a sum of Rs. 60,85,000/- with pendent lite and future interest @12% from the date of filing of the suit till its realization. Let the decree sheet be drawn up accordingly.”*

- 48.** The above said judgment has been followed in ***Swaranjit Singh Sayal v. M.K. Jain, 2023 SCC OnLine Del 7585*** and recently in ***NEC Corpn. India (P) Ltd. v. Plus 91 Security Solutions, 2024 SCC OnLine Del 1683***. From the above quoted judgment, relying on Section 80 of Negotiable Instrument Act, 1881, even if it is not written in the contract/agreement, then also the plaintiff is entitled to claim interest. In the present case, the plaintiff has calculated the interest @15 per annum which in my view is more than the prevalent rate of interest. To secure the ends of justice, it would be fair to direct the



defendant to pay interest @ 9% per annum.

49. For the said reasons, the defendant has not been able to make out any triable issue which requires to grant leave to defend. Hence, the application seeking leave to defend is rejected.

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50. Since the application for leave to defend filed by the defendant is rejected, the plaintiffs are entitled to a decree.
51. As already noted above, plaintiff No. 1 has paid a sum of Rs. 1.5 crores to the defendant under the agreement-1 and Rs. 2.25 crores to the defendant under the agreement-2 totalling to Rs. 3.75 crores. To repay the said amount, the defendant issued two cheques bearing Nos. 061725 and 061726 to the plaintiff No. 1 totalling to Rs. 3.75 crores which were dishonoured on 06.09.2018. On 16.05.2019, the defendant by banking transaction paid Rs. 6 lakhs to the plaintiff No. 1 leaving a balance amount of Rs. 3.69 crores.
52. Plaintiff No. 2 has only paid a sum of Rs.75 lakhs to the defendant. In addition, the defendant had agreed to pay Rs 50 lakhs as the interest totalling to Rs 1.25 crores. To repay the said amount, defendant issued two cheques bearing Nos. 32637 and 061724 to the plaintiff No. 2 for a sum of Rs. 50 lakhs and Rs. 75 lakhs respectively, the cheque bearing No. 32637 is not on record, however, the bank statement filed by the plaintiff No. 2 shows that the said cheque was dishonoured on 22.05.2018. Further, the cheque bearing No. 061724 is placed on record alongwith the return memo. The defendant has paid a sum of Rs. 60 lakhs to the plaintiff No. 2 by banking transaction as noted above leaving a balance amount of Rs. 65 lakhs.



53. The amounts in question i.e. Rs 3.69 crores and Rs. 65 lakhs are fully covered by the cheques issued by the defendant in favour of the plaintiffs and hence, the cheques fall within the purview of Order XXXVII Rule 1(2) of CPC.
54. In this view of the matter, the suit is decreed in the following terms:-
- A. Plaintiff No. 1 is entitled to receive a sum of Rs 3.69 crores from the defendant alongwith interest @ 9% per annum from the date of payment made by the plaintiff No. 1 till the date of institution of this suit.
  - B. Plaintiff No. 2 is entitled to receive a sum of Rs 65 lakhs from the defendant alongwith interest @ 9% per annum from the date of payment made by the plaintiff No. 2 till the date of institution of this suit.
55. Further, the plaintiffs are also entitled to *pendente lite* and future interest @ 9% per annum from the date of institution of suit till the date of recovery.
56. Decree sheet be prepared accordingly.
57. No orders as to costs.
58. Pending applications are disposed of in the above terms.

**JASMEET SINGH, J**

**JULY 18, 2024/(MSQ)**