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

+ **C.R.P. 318/2023, CM APPL. 57116/2023**

ABHISHEK GUPTA Petitioner

Through: Ms. Amrita Chaudhary, Adv.

versus

JITENDER MANN @JEEVAN MANN Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

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14.02.2024

1. The petitioner, who is plaintiff before the learned Trial Court and has filed a suit under Section XXXVII of the Code of Civil Procedure, 1908¹, assailed the impugned order dated 06.10.2023 passed by the Additional District Judge-02, North, Rohini Courts, Delhi².

2. It would be relevant to extract the operative portion of impugned short order, which reads as under:

“This Court is of the considered opinion that the present case is not maintainable under Order XXXVII CPC and ought to be treated as an ordinary suit for the following reasons:

1. In the amended plaint para No.3, only an oral promise by the defendant has been averred. There is no written contract between the parties. In absence of a written contract, present summary suit only on the basis of liquidated demand of money is not maintainable.
2. The Judgment relied upon in case titled as Surender Kumar vs. Manoj Kumar dated 15.12.2020 is clearly distinguishable as that case was dealing with the challenge vide which unconditional leave to defend was granted.

¹ CPC

² Trial Court



Further, it is not the ratio of the case relied upon by the Id. Counsel for the plaintiff that even in absence of a written contract solely on the basis of liquidated demand, a case under Order XXXVII CPC will be maintainable.

In view of the above, the **present suit is hereby treated as an ordinary suit.**

Issue summons of the suit for settlement of the issues to the defendant on filing of PF/RC/Speed Post and Approved Courier Service for 02.11.2023.

Process be given dasti as well, as prayed for by Id. Counsel for the plaintiff.”

3. Learned counsel for the petitioner has urged that there was no written contract between the parties as such. However, the fact that personal loan of Rs. 15,00,000/- was advanced to the respondent/defendant in May, 2020 carrying interest @ 18% per annum till return of the amount is evidenced by the RTGS³ for Rs. 5,00,000/- dated 26.05.2010 as well as Rs. 10,00,000/- dated 05.08.2020 in the bank account of the defendant. It is pointed out that even interest amount had been paid by the defendant in cash on different dates which are depicted in tabular form totaling Rs.6,63,500/-.

4. *Ex facie*, submission made by the learned counsel for the petitioner are worth considering in view of the proposition of law laid down by this Court in **Surender Kumar v. Manoj Kumar**⁴. It was a case where the plaintiff filed a suit claiming that he had advanced a loan of Rs. 21,00,000/-, which was transferred from his bank account to the bank account of the defendant, which was evidenced by the receipt dated 08.08.2015 and the said amount was utilized by the defendant for buying a Mercedes Car. It is in the said backdrop that this Court decided that although suit was found to be one maintainable under Order XXXVII of the CPC, however, the defence put forth by

³ Real Time Gross Settlement

⁴ CRP 57/2020 dated 15.12.2020



the defendant was sufficient for grant of leave and suit was allowed to be continued as an ordinary suit subject to the defendant furnishing a Bank Guarantee. Similar, view appears to have been taken by this Court in case **Anju & Anr. v. Rampal & Anr.**⁵

5. In view of the foregoing discussion, the present revision petition is allowed and the impugned order dated 06.10.2023 is hereby set aside. Learned Trial Court shall now take cognizance of the suit as one under Order XXXVII Rule 3 of the CPC.

6. The petitioner/plaintiff shall appear before the learned Trial Court on 02.04.2024, on which date, summons be ordered to be issued to the defendant as per prescribed form under Order XXXVII Rule 3 of the CPC.

7. It is made clear that this Court has not expressed any opinion on the merits of the case and as and when an application for leave to defend is moved by the respondent/defendant, the same shall be decided by the learned Trial Court on its own merits as per law.

8. The pending application also stands disposed of.

9. A copy of this order be sent to the learned trial Court for information and necessary compliance.

DHARMESH SHARMA, J.

FEBRUARY 14, 2024/sm

⁵ CS(OS) 1159/2014 dated 11.04.2019