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

% *Date of decision: 27th September, 2024*

+ CM(M) 2076/2023

BHIM SINGH

....Petitioner

Through: Mr. L.S. Solanki, Dr. Anu Solanki,
Advocates.

versus

RAM KUMAR

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 57078/2024 (early hearing)

1. Heard.
2. Nobody appears on advance notice from opposite side.
3. The date is preponed and matter is taken up today itself for final arguments.
4. The application stands disposed of.

CM(M) 2076/2023 & CM APPL. 57079/2024

1. Petitioner is defending a suit filed under Order XXXVII of CPC and is aggrieved by order dated 16.11.2023 whereby conditional leave has been granted to petitioner to defend the above said suit.
2. According to plaintiff(respondent herein), he knew defendant and since the defendant was in need of money, he sought financial help from plaintiff and, accordingly, plaintiff gave him a sum of Rs. 7,00,000/- as a friendly loan. In lieu thereof, the defendant, had allegedly signed a promissory note and also



issued two cheques which when presented, returned dishonored.

3. Thus, the suit had been filed on the basis of the above said cheques and promissory note.

4. However, when an application seeking leave to defend was filed by the defendant, it claimed that there was no “*privity of contract*” of any kind between them and rather he had taken loan from third person i.e. Mr. Pankaj Khatri and the cheques in question were given to said Mr. Khatri as security instruments and have been misused in a fraudulent manner. It was also contended that even the promissory note was forged and was not bearing the signature of the defendant.

5. However, when the learned Trial Court considered the above said application seeking leave to defend, unfortunately, it has been disposed of in a little cryptic manner. Such order is reproduced as under:-

*“Present: Sh. P.N. Gaur, Ld. Counsel for the plaintiff.
Sh. Laxman Singh Solanki Ld. Counsel for the defendant
through VC.*

Application seeking leave to defend is disposed off. The Court deems fit to direct that defendant to deposit 30% of the suit amount (7 lakhs) in the court as security in form of FD in favour of plaintiff. Hence defendant is entitled to conditional leave to defend.

The defendants are directed to file written statement alongwith affidavit of admission/ denial of documents within 30 days from today with advance copy to opposite party.

Not to come up on 22.02.2024 for completion of pleadings, filing of affidavit of admission and denial of documents by the plaintiff and framing of issues.”

6. It is very obvious from the above said order that the learned Trial Court has disposed of said application in a very hasty manner without giving any reason, much less a plausible one, as to why it had thought proper to grant



conditional leave.

7. It need not be emphasized that, generally, in such type of suits, grant of leave is rule and refusal is an exception. The guidelines in this regard are contained in various pronouncements of Hon'ble Supreme Court. Reference be also made to *B.L Kashyap and Sons Limited vs JMS Steels and Power Corporation and Another: (2022) 3 SCC 294*.

8. When asked, it was reconfirmed by the learned counsel for the petitioner that the order, as extracted above, was the actual and only order and there was no separate detailed order.

9. The case was today taken up on account of the fact that the learned Trial Court was insisting for submitting FDR in terms of the above said direction, else to proceed further against the defendant.

10. Keeping in mind the peculiar facts of the present case and the manner in which the above said application seeking leave to defend has been dealt with, there is no point in keeping this matter pending anymore and, consequently, the petition is disposed of with direction to learned Trial Court to hear arguments on the above said application seeking leave to defend afresh and to pass order in accordance with law.

11. It is entirely up to the learned Trial Court to see and assess whether its a case where leave to defend should be granted or declined or for that matter, any condition needs to be imposed. Whatever might be the eventual outcome, this Court only expects that reasons are supplied by the learned Trial Court.



12. The next date fixed i.e. 03.02.2025 stands cancelled.
13. It is stated that the matter is now fixed before the learned Trial Court on 07.10.2024.
14. Learned Trial Court is, accordingly, requested to consider the above said matter afresh in light of aforesaid observations and dispose of the above said application after giving due opportunity of hearing to both the sides.
15. Copy of the order be given *dasti* under the signatures of the Court Master.

(MANOJ JAIN)
JUDGE

SEPTEMBER 27, 2024/sw