$~49

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

% ***Date of decision:21st October, 2024***

\+ **C.R.P. 297/2024**

VIJAY KUMAR JAIN & ORS.

.....Petitioner

Through: Mr. Rahul Gupta, Mr. Shekhar Gupta, Mr. Arav Kapoor and Mr. Raghwendra Pratap Rao, Advocates.

versus

ARUN MEHRA PROPRIETOR OF M/S SAREE GHAR & ANR.

.....Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

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

CM APPL. 61539/2024 (*under Section 151 CPC on behalf of the Petitioners for Early Hearing*)

1. An application has been filed on behalf of the petitioners for early hearing.

2. It is submitted on behalf of the petitioners that there is an urgent application for stay of the impugned Order which vide the Leave to Defend has been granted to the respondent.

3. On the submissions made, the matter stands preponed for today.

4. The application is allowed and is accordingly disposed of.

C.R.P. 297/2024

5. A Revision Petition under Section 115 CPC has been filed against the

impugned Order dated 07.08.2024 vide which the learned District Judge, New Delhi has *granted Leave to the defendants/respondents to contest the Suit under Order XXXVII CPC*.

6. The plaintiffs/Revisionist No.1 and 2 are the husband and wife, the Revisionist No.3 is the son and Revisionist No.4 is the wife of the Revisionist No.3. the Plaintiffs, in their suit for Recovery, stated that they had friendly relationship with defendant No.1/respondent who is the Proprietor of defendant No.2, for last more than 25 years. Somewhere around October, 2015, the defendant No.1 took a *friendly loan of Rs.50 lakhs and also offered to pay interest @ 18% per annum with the stipulation that the entire Principal amount along with the interest*, shall be repaid as and when it is demanded by the plaintiffs. At the time of advancing this amount of Rs.50 lakhs, the defendant had signed and executed nine Promissory Notes along with receipt in acknowledgement thereof.

7. The Defendant/Respondent No.1 also gave Nine post-dated cheques in the total sum of Rs.50 lakhs with his signatures, but without date. The aforesaid Nine post-dated cheques were kept by the plaintiffs in their custody on the promise of defendant No.1 that they will be honoured at the time when the demand for return of loan was made by the plaintiffs.

8. During the period of 3 years w.e.f. February, 2016 till September, 2019, the defendants made payment of meagre sum of Rs.2,80,000/- towards interest on the friendly loan. During the time from April, 2016 to September, 2018 six cheques issued by the defendant for payment of interest amount were dishonoured and returned unpaid on the ground of "*funds insufficient*".

9. The Plaintiffs/Revisionists have claimed that they kept on following

the Respondent/Defendants for payment of up-to-date interest. Later in March, 2020 on account of Covid-19 Pandemic and National Lock Down on the request of Defendant No.1 that he had suffered losses in business, the plaintiff pressed for the return of Loan amount only in March, 2022, but the defendants were non-responsive. In July, 2023 Plaintiff No.1 and 2 went to meet Defendant No.1/Respondent at his residence and made a final demand for return of Principal Amount along with up-to-date interest. The Defendant No.1 then issued a Cheque dated 01.07.2023 in the sum of Rs.25,000/-, but again this cheque on presentation got dishonoured for the reason "*Funds Insufficient*".

10. It was further asserted by the Plaintiffs/Revisionists that defendant No.1 in the meeting held in July, 2023 told the plaintiffs to present the said 9 Cheques issued by the defendant at the time of advancing the loan and assured that the cheques would be honoured. On the assurance of defendant No1, the 9 Cheques were presented, but they were returned with the remark "*Non-CTS Cheques*".

11. The plaintiffs then issued a Legal Notice dated 01.09.2023 seeking refund of loan with interest but the defendant failed to even give a Reply to the Legal Notice. Thereafter, the Suit under Order XXXVII CPC was filed.

12. The Revisionists have claimed that the defendant on appearance, filed a Leave to Defend wherein sham and bogus defences were raised.

13. The learned District Judge vide impugned Order dated 07.08.2024, granted unconditional Leave to defend the suit to the defendants. Aggrieved by this Order, present revision Petition has been filed by the Plaintiffs.

14. The Order is challenged on the ground that all the cheques with signatures of the Respondent/Defendant No.1 along with the seal and stamp

of his business i.e. Defendant No.2, were admittedly handed over to the plaintiffs. The amount in figures and words were all filled up by the Defendant No.1 with the clear understanding that when the amount shall become due and recoverable, the plaintiffs shall be entitled to present those cheques for encashment after filling the name of the Drawee and the Date. In addition, 9 Promissory Notes for the total amount of Rs.Rs.50 lakhs had also been issued under the signatures of defendant No.1 along with the revenue stamp and the seal of defendant No.2, in the year 2015-16 when the loan was advanced. The defendant has not denied his signatures on these 9 Cheques and Promissory Notes.

15. The Revisionists have asserted that Ld. District Judge, however, has failed to appreciate the factum of admitted signatures of the defendant on the cheques as well as the 9 promissory notes which were for total amount of Rs.50 lakhs. It has also not been appreciated that defendant No.1 has admitted that a friendly loan was taken by him from plaintiff No.1 in the year 2015 and the last payment of Rs.55,000/- was made on 23.09.2019. If the defence of defendant No.1 is accepted that the entire loan amount stood paid in 2019, then it is not understandable that as to why he had not taken back the blank Promissory Notes/Cheques which had been handed over to the plaintiffs. Moreover, no written Notice was issued to plaintiff No.1 calling upon him to return the Promissory Notes and Cheques nor has he made any complaint in this regard to any Authority. Moreover, the defendants have failed to give any Reply to the Legal Notice dated 01.09.2023 sent by the plaintiffs. The least defendant No.1 could have done was to disclose his alleged triable defences by way of Reply to the Legal Notice.

16. The Revisionists have further contended that the Ld. District Judge was completely confused and misdirected in observing that the colour of the ink used in the signatures and in filling up the details in promissory notes were different. It was no where the case of defendant No.1 in his Leave to Defend Application and in the detailed Affidavit filed in support thereof, that he had not signed all the Promissory Notes and the Cheques in question. There is serious illegality committed in the Order dated 07.08.2024, granting Leave to Defend to the respondent.

17. A reference has been made to the judgment of the Co-ordinate Bench of this Court in RSA 20/2022 *Chander Pal vs. Sripal Singh*, wherein on identical facts, it has been held that once the signatures on the cheques are admitted, then to claim that the amount, date and the name were not filled by the defendant, is not tenable.

18. Reliance has also been placed on the judgments of *IDBI Trusteeship Services Ltd. vs. Hubtown Ltd*. AIR 2016 SC 5321 and *B.L. Kashyap and Sons Ltd. vs. JMS Steels and Power Corporation* (2022) 3 SCC 294.

19. In the end, it is asserted that the unconditional Leave to Defend should not have been granted as the trivial Issues raised by the defendant were not genuine and in good faith; the least that could have been done was that the conditions should have been imposed upon the defendants for depositing the amount in the Court or furnish adequate and sufficient security. Reference has been made to *Uma Shankar vs. MD Overseas* SLP(C) No. 7593 of 2006 and *Milkhiram (India) Private Ltd. and Ors. vs. Chamanlal Bros* AIR 1965 SC 1698.

20. It is further claimed that the learned Trial Court has failed to consider that in case the total Loan advanced by the plaintiffs to defendant No.1 and 2

was only Rs.2 lakhs then there was no occasion for the defendant No.1 to have signed and issued cheques in the sum of Rs.5 lakhs in favour of the plaintiff No.2 on 05.12.2016. Not only this, defendant No.1 also would not have issued a Cheque dated 01.07.2023 for Rs.25,000/- on 23.09.2019, if the entire amount already stood paid on 23.09.2019, as has been claimed by the defendant. There was no occasion for him to issue the cheque in favour of the plaintiffs on 23.09.2019.

21. It is therefore, submitted that the impugned Order suffers from illegality and is liable to be set aside. The suit of the plaintiffs/ Revisionists may be decreed in their favour.

22. **Submissions heard**.

23. The Plaintiff has filed the suit for recovery of Rs.1,16,95,000/- along with interest under Order XXVII CPC on the basis of 9 Cheques and 9 Promissory Notes. According to the Revisionist, the total loan of Rs.50 lakhs was given between 07.12.2015 to 12.02.2016. Five cheques of different amounts were issued on different dates by the petitioners. As a security for the same, the Defendant/Respondent executed 9 Cheques and 9 Promissory Notes bearing his signatures. As per the outstanding, the loan amount was payable as and when the loan amount was demanded back. In the interim, according to the Revisionists, the defendant continued to pay the interest amount. Eventually, Plaintiff started requested him time and again for return of his entire loan amount.

24. Finally, in July, 2023 he went to the house of the respondent and made a final demand for return of Principle amount along with the interest. The Respondent in acknowledgement of his liability, also gave a Cheque dated 01.07.2023 in the sum of Rs.25,000/- as part payment, but the cheque

on presentation was dishonoured for the reason "*funds insufficient*".

25. ***The defences taken by the Respondent/Defendant in his Leave to Defend Application are*** :

(i) Suit is barred by limitation;

(ii) Suit is bad for mis-joinder of cause of action and parties; and

(iii) Defendant No.2 has no legal entity and the suit is not maintainable against it.

26. *On merits*, the Respondent took the defence that he had taken the loan of only Rs.2 lakhs which already stands paid and nothing is due and payable.

27. The Respondent No.1 in his Leave to Defend Application had admitted taking a loan in the year 2015 and having executed 9 Cheques and 9 Promissory Notes for refund of the amount in nine instalments. However, subsequently, towards the end, a plea has been set up that these were all blank signed Promissory Notes and Cheques that were lying with the Petitioners as security for the Loan which have been misused. Blatantly, there is a contradiction in the defence set up by the respondent.

28. However, it cannot be overlooked that according to the Petitioners, total loan of Rs.50 lakhs had been paid by 4 persons at different times vide different nine cheques. The issue has been raised about the *mis-joinder of the cause of action and of the parties.* It is for the Petitioner to explain how all these cheques form part of one transaction or how one suit was maintainable in respect of 9 different Cheques given by four different persons at different times.

29. The *issue of limitation* has also been raised. As per the case of the Petitioners, they had been demanding the refund of loan from time to time

and final demand was made in July, 2023. It is a mixed question of fact and law as to when the first demand for refund of the loan amount was made and from which date the limitation would be calculated. A triable issue has been raised in this regard as well.

30. It is further pertinent to observe that though there are 9 Cheques and 9 Promissory Notes that admittedly bear the signatures of Respondent No.1, but as has been rightly observed by the learned District Judge, the contents, name and date have all been filled at different times on different dates. Further, though the petitioners have claimed that 50 lakhs had been paid through 9 Cheques, but the best way of proving the disbursement of the loan through cheques was to place on record the Bank Statements. The respondent is denying having received the loan amounts under those cheques. This coupled with the fact that the Cheques and the Promissory Notes only had the signatures while the contents especially the amounts have been filled subsequently, triable issues have been raised by the respondents in regard to the disbursement of the Loan amount as well.

31. In *Chander Pal and Ankit Chauhan vs. Sripal Singh* MANU/DE/0577/2022 it has been held that where the signatory gives the blank signed cheques, he does so at his own risk and cost. However, in the present case, there is a denial of having received the loan amount of Rs.50 lakhs and in the facts as disclosed by the petitioners, it is a triable issue that loan of Rs.50 lakhs in fact was given through those 9 Cheques, which is required to be established by the petitioners by way of cogent evidence. This becomes pertinent in the light of the disputes raised by the respondents in regard to the blank Cheques and the Promissory Notes.

32. To conclude, Learned District Judge has rightly allowed the Leave to

Defend Application.

33. There is no merit in the present Revision Petition, which is hereby dismissed.

NEENA BANSAL KRISHNA, J

OCTOBER 21, 2024/va