



2025:DHC:6882



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 29.07.2025

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C.R.P. 99/2023**BRIJ RAJ SINGH****.....Petitioner**

Through: Mr. Lal Singh Thakur, Advocate.

versus

RAVINDER SINGH**.....Respondent**Through: Ms. Ritu Nagar, Advocate for Mr.
Rajbir Bansal, Advocate.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed under Section 151 of the Code of Civil Procedure seeking to challenge an order dated 15.03.2023 passed by the learned ADJ, South East, Saket Courts, New Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the learned Trial Court has allowed the Application for Leave to Defend/Contest filed by the Petitioner/Defendant granting him conditional Leave to Defend subject to deposit a sum of Rs.10 lacs by way of FDR in his own name within a period of one month.
2. The operation of the Impugned Order was stayed by a Coordinate Bench by its order dated 25.04.2023.
3. Learned Counsel for the Petitioner/Defendant submits that in view of the pendency of the present Petition for over two years, the summary suit that as filed by the Respondent/Plaintiff is not proceeding further.
4. Learned Counsel for the Petitioner/Defendant further submits that the issue involved in the present case is limited to a grant of conditional leave to



defend subject to deposit of Rs.10 lacs as is directed by the learned Trial Court.

5. Learned Counsel for the Petitioner/Defendant raises only one contention. It is submitted that the Impugned Order was passed in an arbitrary and mechanical manner. It is further submitted that no loan has been taken from the Respondent/Plaintiff.

6. The brief facts of this case, as reflected from the record, are that it is the case of the Respondent/Plaintiff that the Petitioner/Defendant has taken friendly loan on various dates between 20.02.2012 and 12.04.2012 totalling to a sum of Rs.10 lacs without interest. The amount was to be paid back within two years and a receipt was issued on 12.04.2014 in this behalf. In addition, as per the Respondent/Plaintiff, a cheque bearing No.790689 drawn on State Bank of Indore dated 08.12.2014 in the sum of Rs.10 lacs was also issued by the Petitioner/Defendant, however, the said cheque was dishonoured upon presentation on 24.02.2015, which has led to the filing of the suit for recovery of the amount of Rs.10 lacs under Order XXXVII of the CPC by the Respondent/Plaintiff.

7. The learned Trial Court examined the pleadings of the parties and found that the defence of the Petitioner/Defendant is that they had purchased the property bearing No.B-80, Kalu Mohalla, Village: Garhi, Jarhi Maria, New Delhi by a registered sale deed dated 30.06.2015 from the Respondent/Plaintiff. However, in view of the rise in prices, the Respondent/Plaintiff has been threatening the Petitioner/Defendant to transfer the property in the name of the Respondent/Plaintiff taking advantage of his being poor and helpless. Reliance was also placed by the



Petitioner/Defendant on a police complaint that was lodged on 27.01.2015 by the Petitioner/Defendant against the Respondent/Plaintiff.

8. The record reflects that the Respondent/Plaintiff has placed on record the receipt of Rs.10 lacs of a loan given by the Respondent/Plaintiff to the Petitioner/Defendant as well as a cheque dated 08.12.2014 for Rs.10 lacs, both documents have been signed by the Petitioner/Defendant. Although the signatures on the receipt dated 12.04.2014 have been denied, the signatures on the cheque have been admitted by the Petitioner/Defendant. The Petitioner has however stated that the cheque in issue was snatched by the Respondent/Plaintiff and his associates from the Petitioner/Defendant during a scuffle and thus the FIR was registered.

9. The learned Trial Court after examining the receipt as well as the cheque in issue has found that the receipt *prima facie* reflects that it has been written by the Petitioner/Defendant but has also found that the complaint is silent about as to when the cheque in issue was taken by the Petitioner/Defendant to the Respondent/Plaintiff. Thus, the learned Trial Court has passed the order granting conditional leave to defend subject to deposit of Rs.10 lacs by the Respondent/Plaintiff. The learned Trial Court has thus directed the Petitioner/Defendant to deposit the sum of Rs.10 lacs to secure the interest of the Respondent/Plaintiff within one month from the date of the order.

10. The Supreme Court in the judgment in ***B.L. Kashyap & Sons Ltd. v. JMS Steels & Power Corporation & Anr.***¹ while relying on the judgment in

¹ (2022) 3 SCC 294



IDBI Trusteeship Services Ltd. v. Hubtown Ltd.² has set out that in what circumstances leave can be granted and also whether the defendant would be entitled to conditional or unconditional leave. The Supreme Court has held that if the defendant satisfies the Court that he has substantial defence or raises triable issues indicating a fair, *bonafide* or reasonable defence, even if it is not a positive defence, and is likely to succeed, he would be entitled to unconditional leave to defend. However, where he raises some triable issues, but those issues are still doubtful, as to whether they are in good faith, the learned Trial Court may impose conditions both as to time or mode of trial. It has further been held that where the defence appears to be plausible but improbable, the learned Trial Court may direct the furnishing of the entire amount as security. The relevant extract of ***B.L. Kashyap*** case is set out below:

“33. It is at once clear that even though in IDBI Trusteeship [IDBI Trusteeship Services Ltd. v. Hubtown Ltd., (2017) 1 SCC 568 : (2017) 1 SCC (Civ) 386] , this Court has observed that the principles stated in para 8 of Mechelec Engineers case [Mechelec Engineers & Manufacturers v. Basic Equipment Corp., (1976) 4 SCC 687] shall stand superseded in the wake of amendment of Rule 3 of Order 37 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.

33.1. As noticed, if the defendant satisfies the Court that he has substantial defence i.e. a defence which is likely to succeed, he is entitled to unconditional leave to defend. In the second eventuality, where the defendant raises triable issues indicating a fair or bona fide or reasonable defence, albeit not a positively good defence, he would be ordinarily entitled to unconditional leave to defend. In the third eventuality, where the defendant raises triable issues, but it remains

² (2017) 1 SCC 568



doubtful if the defendant is raising the same in good faith or about genuineness of the issues, the trial court is expected to balance the requirements of expeditious disposal of commercial causes on one hand and of not shutting out triable issues by unduly severe orders on the other. Therefore, the trial court may impose conditions both as to time or mode of trial as well as payment into the court or furnishing security. In the fourth eventuality, where the proposed defence appears to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also of payment into the court or furnishing security or both, which may extend to the entire principal sum together with just and requisite interest.

33.2. Thus, it could be seen that in the case of substantial defence, the defendant is entitled to unconditional leave; and even in the case of a triable issue on a fair and reasonable defence, the defendant is ordinarily entitled to unconditional leave to defend. In case of doubts about the intent of the defendant or genuineness of the triable issues as also the probability of defence, the leave could yet be granted but while imposing conditions as to the time or mode of trial or payment or furnishing security. Thus, even in such cases of doubts or reservations, denial of leave to defend is not the rule; but appropriate conditions may be imposed while granting the leave. It is only in the case where the defendant is found to be having no substantial defence and/or raising no genuine triable issues coupled with the court's view that the defence is frivolous or vexatious that the leave to defend is to be refused and the plaintiff is entitled to judgment forthwith. Of course, in the case where any part of the amount claimed by the plaintiff is admitted by the defendant, leave to defend is not to be granted unless the amount so admitted is deposited by the defendant in the court.

33.3. Therefore, while dealing with an application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the rule or that the leave to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues, with the defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave. It gets perforce reiterated that even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated above could be imposed while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the defendant fails to show any genuine triable issue and the court finds the defence to be frivolous or vexatious.

[Emphasis Supplied]



11. As stated above, the learned Trial Court after examining the contention of both the parties has given a finding that conditional leave to defend be granted to the Petitioner/Defendant subject to deposit of Rs.10 lacs. The findings of the learned Trial Court are based on the receipt/agreement dated 12.04.2014, which has been placed on record by the Respondent/Plaintiff, as well as the cheque dated 08.12.2014 in the sum of Rs.10 lacs.

12. The Supreme Court in *IDBI Trusteeship* case has held that where the proposed defence appears to be plausible but improbable, the Court may impose conditions which include furnishing of the amount claimed. The learned Trial Court examined the defence raised and has given the finding based on the pleadings and documents placed before itself.

13. In any event, and as stated above, the only ground for challenge that has been set out by the Petitioner is that the Impugned Order has been passed in an arbitrary and mechanical manner. The Impugned Order however reflect that it has been passed by the learned Trial Court after examining the pleadings and documents on record and it gives a finding as has been reproduced above.

14. The Supreme Court in *Ambadas Khanduji Shinde v. Ashok Sadashiv Mamurkar*³, has held that the revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of CPC, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of

³ (2017 14 SCC 132



jurisdiction. The Supreme Court in *Ambadas Khanduji* case has held:

“14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual findings while exercising jurisdiction under Section 115 of the Civil Procedure Code. It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. In the facts on hand, the courts below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial court.”

[Emphasis Supplied]

15. In view of the foregoing, this Court finds no ground to interfere with the Impugned Order. The Petition is accordingly dismissed.

16. At this stage, learned Counsel for the Petitioner/Defendant submits that the Petitioner/Defendant is in a financial difficulty and he would need additional time to make payment as was directed by the learned Trial Court in the Impugned Order.

17. Accordingly, this Court deems it apposite to extend the time to comply with the Impugned Order by another 12 weeks.

18. Needless to add, the Petitioner is at liberty to take any steps that he deems fit in accordance with the submissions made before the learned Trial Court on the aspect of poor financial condition of the Petitioner/Defendant.

19. The parties shall act based on a digitally signed copy of the order.

TARA VITASTA GANJU, J

JULY 29, 2025/pa/ha