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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 18.02.2025

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RFA 311/2022

ROHIT SINGH

.....Appellant

Through: Mr. Sandeep Singh, Advocate

versus

ANIL KUMAR PODDAR

.....Respondent

Through: Mr. Vinod Kumar, Advocate

CORAM: JUSTICE GIRISH KATHPALIA

J U D G M E N T (ORAL)

1. The appellant has assailed judgment and decree dated 06.04.2022, passed by the learned Additional District Judge, East District, Karkardooma Courts, Delhi, in the suit filed by the present respondent under Order XXXVII CPC. By way of the impugned judgment, the learned Trial Court dismissed the application of the appellant seeking leave to defend the suit.
2. At their request, I have heard final arguments advanced by learned counsel for both sides and examined the record.
3. Briefly stated, circumstances leading to the present appeal are as follows.

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3.1 The present respondent filed a summary suit for recovery of Rs.14,04,000/- against the appellant, pleading that being tourist guide by profession, he was introduced with the appellant by their common friend; that the appellant allured him to invest money in some profitable venture, so he paid a total sum of Rs.14,04,000/- to the appellant in multiple installments during the period from 16.01.2013 to 27.01.2014; that thereafter, the appellant started avoiding him as regards the said investments and finally, on being persuaded, the appellant issued four post dated cheques in the month of May, 2015 in his favour; that those cheques, totaling to the tune of Rs.14,04,000/- got dishonoured by the banker of the appellant for the reason that the funds in his account to his credit were not sufficient; and that when despite repeated demands, the appellant did not pay back the said amount, he issued legal notice dated 10.03.2018, but the appellant opted to avoid the same. Therefore, the present respondent filed the summary suit under Order XXXVII CPC on the basis of those bounced cheques.

3.2 After service of summons to enter appearance, followed by entering appearance and service of summons for judgment under Order XXXVII CPC, the appellant filed application seeking leave to defend the suit.

3.3 In his application for leave to defend, the appellant took a plea that since the respondent did not file any criminal complaint under Section 138 Negotiable Instruments Act, no liability survives against him. Additionally,



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it was also pleaded and testified by the appellant in his application for leave to defend that the cheques in question were forcibly obtained from him by the respondent and his musclemen, who abducted and detained him for that purpose.

3.4 Both the said grounds were rejected by the learned trial court, holding that the same do not raise any triable issue because admittedly the cheques in question were signed and issued by the appellant and those cheques got bounced. Thence, the application of the appellant for leave to defend was dismissed and consequently, the suit was decreed.

3.5 Hence, the present appeal.

4. During arguments today, learned counsel for appellant contends that the impugned judgment and decree are not sustainable in the eyes of law because there was no legally enforceable debt insofar as even according to the respondent, the money paid by him to the appellant was for investment. Learned counsel for appellant also contends that pleadings of the appellant clearly raised a triable issue as to whether the cheques in question were obtained under coercion after abducting and illegally detaining the appellant. No other argument has been advanced.

5. On the other hand, learned counsel for respondent supports the



impugned judgment and decree and also submits that the appellant had issued cheques in same fashion to another person, who also obtained decree.

6. The legal position as regards scope of grant or denial of leave to defend a suit under Order XXXVII CPC is now well settled. In plethora of judicial pronouncements, the Supreme Court laid down the principles on which an application for leave to defend has to be examined by the trial court. In one such case titled: **IDBI Trusteeship Services Limited vs. Hubtown Limited**, (2017) 1 SCC 568, the Hon'ble Supreme Court held thus:

“16. It is thus clear that Order 37 has suffered a change in 1976, and that change has made a difference in the law laid down. First and foremost, it is important to remember that Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36] is a direct authority on the amended Order 37 provision, as the amended provision in Order 37 Rule 3 is the same as the Bombay amendment which this Court was considering in the aforesaid judgment. We must hasten to add that the two provisos to sub-rule (3) were not, however, there in the Bombay amendment. These are new, and the effect to be given to them is something that we will have to decide. The position in law now is that the trial Judge is vested with a discretion which has to result in justice being done on the facts of each case. But Justice, like Equality, another cardinal constitutional value, on the one hand, and arbitrariness on the other, are sworn enemies. The discretion that a Judge exercises under Order 37 to refuse leave to defend or to grant conditional or unconditional leave to defend is a discretion akin to Joseph's multi-coloured coat — a large number of baffling alternatives present themselves. The life of the law not being logic but the experience of the trial Judge, is what comes to the rescue in these cases; but at the same time informed by guidelines or principles that we propose to lay down to obviate exercise of judicial discretion in an arbitrary manner. At one end of the spectrum is unconditional leave to defend, granted in all cases



which present a substantial defence. At the other end of the spectrum are frivolous or vexatious defences, leading to refusal of leave to defend. In between these two extremes are various kinds of defences raised which yield conditional leave to defend in most cases. It is these defences that have to be guided by broad principles which are ultimately applied by the trial Judge so that justice is done on the facts of each given case.

17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (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.”

7. Falling back to the present case, so far as drawing of the cheques in question is concerned, there is clear admission on the part of the appellant that the same were drawn by him. As regards the allegation that the cheques were obtained after abducting the appellant and illegally detaining him, admittedly no police complaint was lodged, nor even any notice was issued by the appellant to the respondent or the bank, alleging the issuance of cheques under force. Nothing prevented the appellant from instructing his bank to stop payment of the said cheques on the ground that the same were not issued voluntarily, but that also was not done. That being so, pushing the parties to undergo rigmaroles of trial would be travesty of justice, since there is no triable issue in this regard.

8. As regards the liability argument, the issuance of the cheques in question in itself would raise a presumption of legally enforceable debt. As mentioned above, it is not in dispute that the present respondent paid a total



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sum of Rs.14,04,000/- to the appellant towards investments. And as regards the cheques in question, admittedly drawn by the appellant were towards repayment of the money invested by the respondent. As mentioned above, there is not even shred of material to show that the said cheques were not voluntarily issued by the appellant. Merely because the appellant opted not to initiate proceedings under Section 138 Negotiable Instruments Act, his right to claim recovery of money through this suit cannot get defeated.

9. The above conspectus shows that the appellant has no substantial defence and raises no genuine triable issues; rather, the defence raised by the appellant is completely frivolous and vexatious.

10. I am unable to find any infirmity in the impugned judgment and decree, so the same are upheld. The appeal is dismissed.

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GIRISH KATHPALIA, J.

FEBRUARY 18, 2025/ry