



2025:DHC:553-DB



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

% Judgment reserved on: 07.01.2025
Judgment delivered on: 30.01.2025

+ **FAO(OS) 84/2024**

CHANDER BHALLA

....Appellant

versus

RAJEEV BHATNAGAR

....Respondent

Advocates who appeared in this case:

For the Appellant : Ms. Beenashaw Soni and Ms. Mansi Jain,
Advocates.

For the Respondent : Ms. Anusuya Salwan, Mr. Rachit Wadhwa and
Mr. Bankim Garg, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present appeal has been filed assailing the impugned order dated 08.04.2024 passed by the learned Single Judge in CS(OS) 619/2022 titled *Chander Bhalla vs. Rajeev Bhatnagar* filed by the appellant, *vide* which the application of the respondent under Order XXXVII Rule 3(5) Civil Procedure Code, 1908 (hereafter "*CPC*") seeking leave to defend has been allowed, unconditionally.

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2. The facts, shorn of unnecessary details and germane to the issue at hand and as collated from the appeal as well as the impugned order are as under:-

- (a) It is the case of the appellant that the respondent is his distant relative who, being in dire need of funds, requested the appellant for a personal loan amounting to Rs.7.5 crores and offered to pay interest at 12% p.a. It is stated that the appellant advanced the said loan by RTGS and the cheques drawn on Kotak Mahindra Bank during the period from 12.12.2017 to 26.03.2019, which were duly encashed by the respondent. It is also stated that besides the said loan, the respondent had taken another loan of Rs.2.5 crores from the company of the appellant namely M/s. Grand Prix Engineering Pvt. Ltd. which is also outstanding and for which a separate suit had been filed.
- (b) The respondent continued to make payments till the month of July, 2019. However, he started defaulting in repayment from the month of August, 2019 and further asked for subsequent loans, which was declined by the appellant in light of the non-payment of the outstanding amount of the previous loan. The respondent sought time till September, 2021 to repay the outstanding loan amount and the interest amount on the pretext of the then prevailing pandemic.
- (c) Pursuant to above, it is asserted that the parties decided to put the terms of the oral loan into writing. Accordingly, a loan agreement dated 15.09.2021 was executed between the appellant and the

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respondent whereby the respondent duly acknowledged the receipt of Rs.7.5 crores as personal loan on interest @ 12% p.a. from the appellant and the respondent further agreed in the said loan agreement that he would return the entire loan amount as and when demanded by the appellant within 90 days.

- (d) It is alleged by the appellant that the respondent failed to make payment of the principal amount including interest as assured by him. Therefore, by way of an e-mail dated 24.01.2022, the appellant demanded return of the loan amount with the entire arrears of interest w.e.f. 01.08.2019. The appellant again *vide* letter dated 14.02.2022 demanded repayment of the entire loan amount, along with the interest which was duly replied to by the respondent *vide* email dated 15.02.2022, acknowledging the loan, however, the respondent did not make any payment.
- (e) In his attempt to recover the money, the appellant *vide* email dated 03.05.2022 demanded repayment of the loan amount, along with the interest which was duly replied to by the respondent *vide* email dated 03.05.2022, thereby offering certain terms for settlement on the outstanding loan amount which would be applicable to both the loans advanced by the appellant and by the company in which the appellant is a Director i.e., M/s. Grand Prix Engineering Private Limited. However, the appellant as well as the company rejected the said proposal on the ground that the proposal did not include the amount

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due in arrears of interest and the repayment schedule spread over a period of five years.

- (f) Thereafter, the respondent sent another *email* dated 06.05.2022 offering to make the payment of the loan amount without interest and in a span of 6 years, which was not agreed to by the appellant. Subsequently, the appellant approached pre-litigation mediation, during which the respondent gave unrealistic proposals, which were not acceptable to the appellant.
- (g) Aggrieved by the aforesaid non-payment of the loan amount by the respondent, the appellant filed the underlying suit seeking a decree under Order XXXVII of CPC for Rs.10,31,34,247/-.
- (h) The respondent herein filed an application Under Order XXXVII Rule 3(5) for grant to leave to defend which was allowed by the learned Single Judge *vide* impugned order dated 08.04.2024. Aggrieved by the same, the appellant has preferred the present appeal.

CONTENTIONS OF THE APPELLANT:-

3. Ms. Beenashaw Soni, learned counsel for the appellant submitted that the respondent in his leave to defend has nowhere disputed his signatures on any of the documents filed by the appellant but has only taken a vague, sham and baseless plea that the said signatures of the respondent were taken under threat and coercion by the appellant. Further, the respondent has also taken a vague plea of cash payment of Rs.1 crore without any statement or

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proof and without giving any details of investment or documents to show what is the investment and terms of investment or without even disclosing the name of company/firm in which alleged investment has been made.

4. While referring to the statement of ledger account of the respondent maintained by the appellant, learned counsel submits that the respondent has not disputed the fact that he had been paying interest continuously and regularly till July, 2019 when certain defaults started occurring. She emphasized that except for a bald allegation that the respondent was forced and coerced into signing the loan agreement dated 15.09.2021, not a single shred of document has been filed in support of such baseless allegation. She states that contrary to such stand, the respondent in fact, entered into negotiations and settlement with the appellant. In support thereof, Ms. Soni, learned counsel referred to a number of documents on record which are not disputed by the respondent. Learned counsel has specifically referred to para 5 and para 10 of the application of the respondent seeking leave to defend to emphasize that there is an apparent contradiction between the two paragraphs in respect of how the loan agreement dated 15.09.2021 was signed and executed. She submits that in case this were true, there is no reason why the respondent has not filed a single complaint with the police authorities. In fact, she referred to an e-mail dated 03.05.2022 sent by the respondent to the appellant giving a schedule of how the respondent would pay the principal amount in parts over a period of five years. According to her, in view of such overwhelming documentary evidence placed on record

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by the appellant indicating the admission of liability by the respondent, the impugned order rather than granting unconditional leave, ought to have dismissed the application seeking leave to defend and decreed the suit.

5. Learned counsel insists that the record indicates that the defence taken by the respondent is vague, sham and moonshine. She contends that the law regarding how Civil Courts are to examine an issue of leave to defend in a Summary Suit under Order XXXVII CPC is well settled and in case the Courts find that the defence taken by the defendant is vague, sham or moonshine, ordinarily a decree ought to be passed. She prays that in view of the overwhelming documents in support of the appellant, the impugned judgment of the learned Single Judge be set aside and a decree be passed in favour of the appellant.

CONTENTIONS OF THE RESPONDENT:-

6. Ms. Anusuya Salwan, learned counsel for the respondent counters the arguments addressed by the learned counsel for the appellant. She addresses arguments in general, in support of the reasons and findings rendered by the learned Single Judge in the impugned judgment. She states that the learned Single Judge has correctly appreciated various defences taken up by the respondent in his leave to defend application. She submits that the respondent/defendant has categorically averred that the amount received from the appellant was in the form of investment and not loan. She states that the controversy surrounding how the loan agreement dated 15.09.2021 had been forcibly executed by putting undue pressure and coercion upon the

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respondent has also been rightly believed by the learned Single Judge to be issues which are triable in nature. Similarly, learned counsel also contends that the whatsapp messages relied upon by the appellant too were extracted from the respondent by putting pressure through goons and henchmen. She contends that whatever documents are required would be filed at the appropriate stage in the form of evidence. She states that at the stage of consideration of an application seeking leave to defend, all that the Courts need to examine is as to whether the defendant in a particular case has been able to put up a defence which are triable in nature. In support of her contentions, she relies upon the judgment of the Supreme Court in ***B.L. Kashyap and Sons Limited vs. JMS Steels and Power Corporation and Another*, (2022) 3 SCC 294.**

7. Yet another relevant issue according to Ms. Salwan is that though the loan is stated to have been extended in the year 2017 and the alleged default occurred from August, 2019, intriguingly, the loan agreement is stated to have been executed on 15.09.2021. According to her, this itself is a relevant factor pointing towards coercion, which itself is a triable issue. Thus, according to her, the present appeal is devoid of merits and ought to be dismissed.

ANALYSIS AND CONCLUSION:-

8. It is trite that unlike the earlier judgment in ***Mechelec Engineers and Manufacturers vs. Basic Equipment Corporation*, (1976) 4 SCC 687**, over a period of time, the law regarding the principles which are applicable and

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are to be applied at the time of considering applications seeking leave to defend under Order XXXVII Rule 3 of the Code of Civil Procedure, 1908, have been harmonised and tempered. The Supreme Court in ***B.L. Kashyap & Sons Limited (supra)*** had, after closely examining its judgment in ***Mechelec Engineers (supra)*** and ***IDBI Trusteeship Services Ltd. v. Hubtown Ltd., (2017) 1 SCC 568***, held as under:

“33. It is at once clear that even though in IDBI Trusteeship, this Court has observed that the principles stated in para 8 of Mechelec Engineers case 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 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

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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."

It is apparent from the aforesaid ratio that if the defendant raises defence which appear to be plausible but improbable, strict conditions as to the time or mode of trial as also payment into the Court or furnishing securities or both extending to the entire principal sum with just and requisite interest may be directed by the Court.

9. Applying the aforesaid ratio, we must examine the facts obtaining in

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the present case. Ms. Soni has shown and referred to documents like the statement of ledger account, the purported loan agreement, the letters emanating from the respondent to the bank and the e-mails acknowledging the loan and indicating the terms of settlement issued by the respondent in support of her submissions. Though, upon a *prima facie* consideration, this Court finds substance in the submissions made by Ms. Soni, yet keeping in view the fact that apart from the defences sought to be vehemently contended by the appellant, we find that the respondent/defendant has taken other grounds of defence as well. One such ground which commends to us is the objection on territorial jurisdiction of this Court. In para 17 of the application seeking leave to defend, the respondent has categorically asserted that the loan agreement was executed in Gurgaon and thus, the High Court of Delhi would not have jurisdiction. In order to appreciate the said contention, it would be apposite extract para 17 hereunder:

“17. That this Hon’ble Court does not have territorial jurisdiction to adjudicate upon the present suit. That the Loan Agreement dated 15.09.2021 admittedly was executed in Gurgaon and therefore, this Hon’ble Court has no territorial jurisdiction over the present suit. Further that on the date of execution of the Loan Agreement dated 15.09.2021, the Defendant was residing in Gurgaon. The alleged Loan Agreement states “Rajeev Bhathagar having his residence at C-28, Pushpanjali Farms, Bijwasan, New Delhi - 110061” The plaintiff has also filed certain documents on 28.10.2022 consisting Sale Deed (dated 27.07.2016 whereby Defendant had sold the property bearing No. C-28, Pushpanjali Farms, Bijwasan, New Delhi - 110061. Therefore, as on 15.09.2021, the Defendant was not a resident of C-28 Pushpanjali Farms, Bijwasan, New Delhi- 110061. That this Hon’ble Court has no territorial jurisdiction to entertain the present suit and is liable to return the suit to the Plaintiff under Order 7 Rule 10 of CPC to be filed before the court of competent jurisdiction and which will be the court of Gurgaon, in the present facts and circumstances.”

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10. Apart from the above, this Court finds that the appellant/plaintiff in its prayer clause has sought interest @ 18% p.a. whereas the purported loan agreement dated 15.09.2021 indicates interest leviable at the rate of 12% p.a. In our considered opinion, this fact would itself tantamount to a triable issue apart from the issues raised by the respondent. At this stage, it would not be appropriate for this Court, that too, in appellate proceedings, to render any conclusive opinion or finding either in respect of the documentary evidence or the arguments addressed lest it may prejudice either of the parties.

11. That said, since this Court is of the considered opinion that the case of the respondent/defendant falls within the fourth category as conceived in para 33.1 of the Supreme Court in *B.L. Kashyap & Sons Limited (supra)*, it would be in the interest of justice as also in consonance with the principles so laid down that the respondent be directed to make a deposit in order to secure the interests of the appellant. Clearly, the respondent is not entitled to an unconditional leave, given the aforesaid facts.

12. In view of the above, the respondent is directed to deposit a sum of Rs.10,31,34,247/- in this Court within a period of four weeks in the name of the Registrar General, who shall invest the same forthwith in an interest bearing FDR with auto renewal clause. Subject to such deposit, the respondent is permitted to file his written statement within four weeks thereafter. It is made clear that in case such deposit is not made, the defendant would not be entitled to any leave to defend.

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13. The appeal is disposed of in above terms with no order as to costs.
14. Pending application, if any, also stands disposed of.

TUSHAR RAO GEDELA, J

VIBHU BAKHRU, J

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