



2025:DHC:4886



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

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***Date of Decision: 23.05.2025***

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**C.R.P. 206/2024 & CM Appl.38405/2024****SAR AVIATION SERVICES PVT LTD**

.....Petitioner

Through: Ms. Mudabbera Zaheen, Adv.

versus

**SANJAY KAPOOR**

.....Respondent

Through: Mr. Pranav Kanti, Adv.

**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. A request for an adjournment is made on behalf of the Petitioner.
2. Learned Counsel for the Respondent opposes the request for adjournment and submits that by its order dated 11.07.2024, a Coordinate Bench of this Court had kept the proceedings before the learned Trial Court in abeyance till the next date of hearing. Learned Counsel for Respondent submits that the Petitioner is only delaying the adjudication of the suit filed under Order XXXVII of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] by the Respondent. It is contended that in view of the interim protection granted by this Court, the matter is not proceeding any further before the learned Trial Court.
  - 2.1 Learned Counsel for the Respondent submits that the Respondent has filed a summary suit under Order XXXVII of the CPC on 16.08.2023 for recovery in the sum of Rs. 24,50,000/- with *pendente lite* and future interest and prior to leave to defend being decided, the learned Trial Court has



decided the Application under Order VII Rule 11 of the CPC which has been filed by the Petitioner before the learned Trial Court.

2.2 Learned Counsel for the Respondent submits that the Application for leave to defend filed by the Petitioner has not yet been decided by the learned Trial Court, however, the learned Trial Court has by the Impugned Order proceeded to decide the Application under Order VII Rule 11 of the CPC.

3. Learned Counsel for the Petitioner submits that she is not aware of the facts of the present case.

4. The Court has perused the Orders passed by the learned Trial Court in the matter. The record reflects that the Petitioner filed an Application under Order XXXVII Rule 3 (5), CPC and an Application under Order VII Rule 11 CPC was also filed by the Petitioner. On 04.03.2024, the Application under Order VII Rule 11 CPC filed by the Petitioner was dismissed and the matter was listed for arguments on leave to defend application.

4.1 It is apposite to extract orders dated 30.01.2024 and 04.03.2024 passed by the learned Trial Court in this behalf which are set out below:

**"30.01.2024**

**Matter is fixed for further arguments on pending application under Order VII Rule 11 CPC.**

*However, it is submitted by Ld. Counsel for defendant that main counsel is in some personal difficulty and that is why arguments could not be addressed on the pending application.*

**It is revealed that application has been heard on two occasions and defendant has sought time to address further arguments.**

*In view of same, one last opportunity is granted to defendant to address arguments on pending application otherwise, application will be decided as per record.*



List for 12.02.2024.

04.03.2024

Vide separate order, application under Order VII Rule 11 CPC is dismissed.  
List for arguments on leave to defend application for 22.04.2024."

[Emphasis supplied]

4.2 Clearly, the learned Trial Court has treated the suit under Order XXXVII of the CPC as an ordinary suit and has proceeded to decide an Application under Order VII Rule 11 of the CPC filed by the Petitioner without allowing the Respondent's Application for leave to defend/contest filed under Order XXXVII Rule 3(5) CPC.

5. Order XXXVII CPC is a special remedy which provides for expeditious hearing and disposal of the suit and is thus distinct from a normal civil suit. The Supreme Court in the case of **Rajni Kumar v. Suresh Kumar Malhotra & Anr<sup>1</sup>**, has held that the purpose of Order XXXVII CPC is to ensure an expeditious hearing and disposal of the Suit. The relevant extract is reproduced below:

*"11. It is important to note here that the power under Rule 4 of Order 37 is not confined to setting aside the ex parte decree, it extends to staying or setting aside the execution and giving leave to appear to the summons and to defend the suit. We may point out that as the very purpose of Order 37 is to ensure an expeditious hearing and disposal of the suit filed thereunder, Rule 4 empowers the court to grant leave to the defendant to appear to summons and defend the suit if the court considers it reasonable so to do, on such terms as the court thinks fit in addition to setting aside the decree. Where on an application, more than one among the specified reliefs may be granted by the court, all such reliefs must be claimed in one application. It is not permissible to claim such reliefs in successive petitions as it would be contrary to the letter and spirit of the provision. That is why where an application under Rule 4 of Order 37 is filed to set aside a decree either because the defendant did not appear in response to summons and limitation expired, or having appeared, did not apply for leave to defend the*

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<sup>1</sup> (2003) 5 SCC 315



*suit in the prescribed period, the court is empowered to grant leave to the defendant to appear to the summons and to defend the suit in the same application.”*

[Emphasis Supplied]

6. Order XXXVII Rule 3 CPC provides the procedure to be followed once a Defendant enter appearance. The provision sets out that upon the Defendant's filing an affidavit for leave to defend/contest, the Court may grant leave to defend/contest and upon such terms as appear to be just.

6.1 It is apposite to set out the provisions of Order XXXVII Rule 3(5) of the CPC below:

**3. Procedure for the appearance of defendant.**—(1) *In a suit to which this Order applies, the plaintiff shall, together with the summons under Rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.*

(2) *Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.*

(3) *On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.*

(4) *If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4-A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.*

**(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms**



**as may appear to the Court or Judge to be just:**

*Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:*

*Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court."*

[Emphasis supplied]

6.2 Sub-Rule (6) of Order XXXVII Rule 3 of the CPC provides a procedure if the Application for leave to defend is not filed by the Defendant as below:

**(6) At the hearing of such summons for judgment,—**

*(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or*

**(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.**

*(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit."*

[Emphasis supplied]

7. A plain reading of this provision shows that in a summary suit under Order XXXVII of the CPC, the Court is required to decide the Application for leave to defend at the first instance, prior to entertaining any other Applications filed by such Defendant. Until the Court's decision on whether or not to permit the Defendant to contest and if so, on what terms, whether unconditionally or on subject to some deposit or otherwise, is to be decided



by the Court, without such a decision the matter cannot proceed further.

8. A perusal of the Impugned Order shows that it premises itself on three grounds for challenge which are raised by the Petitioner in its Application under Order VII Rule 11 of the CPC that is whether or not the suit should have been filed before the Commercial Court; second, that the suit is barred by the provisions of Section 3 of the Punjab Registration of Money Lenders Act, 1938; and lastly that the learned Trial Court does not have the territorial jurisdiction to entertain the suit.

8.1 The Impugned Order does not set out any decision under Order XXXVII Rule 3(5) of the CPC nor does it set out that the Petitioner has been granted leave to contest the case. In fact, the order dated 04.03.2024 of the learned Trial Court shows that the Application under Order XXXVII Rule 3(5) of the CPC has been fixed for hearing on a date after the decision under Order VII Rule 11 of the CPC.

9. In view of the fact that the procedure as is set out in Order XXXVII of the CPC has not been followed by the learned Trial Court, the Impugned Order cannot be sustained.

10. The Impugned Order is accordingly set aside. The parties shall appear before the learned Trial Court. The learned Trial Court is directed to decide the Application for leave to defend in the first instance. It is, however, clarified that the Petitioner is permitted to take all objections to the maintainability of the suit before the learned Trial Court *albeit* in accordance with law. All rights and contentions of the parties are left open in this behalf.

11. The Petition is disposed of in the foregoing terms. The pending



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Application also stands closed.

11.1 It is, however, made clear that the order passed today will not preclude the Petitioner from raising all contentions before the learned Trial Court. The rights and contentions of both the parties are left open in this behalf.

12. The parties will act based on the digitally signed copy of the order.

**TARA VITASTA GANJU, J**

**MAY 23, 2025/r**

*Click here to check corrigendum, if any*