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

Date of Decision: 15.05.2025

\+ **<u>C.R.P. 14/2024 & CM APPL. 1492/2024</u>**

BHARAT KUMAR GUPTA .....Petitioner

Through: Mr. C.M. Grover, Advocate.

versus

SHRI SANJAY KUMAR .....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

<u>TARA VITASTA GANJU, J.:</u> (Oral)

1. The present Petition has been filed on behalf of the Petitioner under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] against the order dated 25.09.2023 passed by learned Civil Judge, East District, Karkardooma Courts, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application for Leave to Defend/Contest filed by the Petitioner has been allowed subject to deposit of 30% of the principal loan amount.

2. Briefly the facts are that the Suit for recovery under Order XXXVII of the CPC was filed based on a cheque bearing No.295148 dated 24.08.2018 drawn on State Bank of India, Khureji Khas, Delhi, issued in the sum of Rs.3 lacs by the Respondent.

3. It is case of the Respondent that the Petitioner took a friendly loan in the sum Rs.3 lacs from the Respondent and that in discharge of his obligation towards that loan, the Petitioner issued a cheque for Rs.3 lacs. Thus, a Suit for recovery in the sum of Rs.3 lacs along with interest thereon has been filed by the Respondent under Order XXXVII of the CPC.

4. In his defence, the Petitioner has stated that he never sought any loan from the Respondent, but there was an earlier loan that was taken in the year 2012 in the sum of Rs.7,50,000/- from the father of the Respondent and for that, there were five blank cheques issued to the father of the Respondent. However, the amount was returned and a family Memorandum of Settlement [hereinafter referred to as "MOS"] was executed. In that MOS, it was stated that the cheques were lost. Essentially, it is the contention of the Petitioner that it is one of these lost cheques which is now being misused by the Respondent.

5. The learned Trial Court has examined the Plaint and the defence, and based on the principles of adjudicating a Leave to Defend and giving some credence to the story of the Petitioner, has allowed the Leave to Defend Application subject however to the deposit of 30% of the principal amount.

6. The learned Trial Court has found that the suit has been filed for repayment of a sum of Rs. 3 lacs for which a post-dated cheque was issued by the Respondent to the Petitioner. Since the cheque, when presented was dishonoured for the reason of funds being insufficient, the liability of the Petitioner has arisen.

7. The learned Trial Court examined the contentions as raised by the Defendant including with respect to MOS executed by the father of the Petitioner and the Respondent and examined the defence raised in their Reply to leave to defend and found that the averments regarding the cheque being issued pursuant to the MOS, found that the same is borne out of the MOS.

8. Given that a plausible defence has been raised by the Petitioner, the

learned Trial Court has deemed it apposite to allow the Application for leave to defend, subject however to the condition of deposit of 30% of the amount in dispute.

9. The Supreme Court in ***Ambadas Khanduji Shinde v. Ashok Sadashiv Mamurkar***[1], 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 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]

10. An examination of the Impugned Order shows that the Impugned Order has been passed based on the principles as set out by the Supreme Court in ***IDBI Trusteeship Services Ltd. v. Hubtown Ltd.***[2]. The Supreme Court in the ***IDBI*** case has held that if triable issues have been raised but if there is a doubt, the Court may impose conditions on the grant of leave which include payment or security. It was held:

> *"17.3. Even if the defendant raises triable* ***issues, if a doubt is left with the***

[1] (2017 14 SCC 132
[2] (2017) 1 SCC 568

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."*

[Emphasis Supplied]

11. An examination of the MOS, shows that it has been executed between the Petitioner and the father of the Respondent and sets out that five post-dated blank cheques were issued in respect of a loan. It further states that the blank cheques have been lost and misplaced.

12. On the other hand, the suit as filed by the Respondent/Plaintiff sets out that a friendly loan in the sum of Rs. 3,00,000/- was advanced on 15.07.2018 by the Respondent/Plaintiff to the Petitioner, against which a post-dated cheque was issued by the Petitioner. The cheque when presented was dishonoured and thus, the suit for recovery for the dishonoured cheque was filed.

12.1 In its Application for leave to defend, the defence as raised by the Petitioner was that the Petitioner in the year 2012 took a loan from father of the Respondent/Plaintiff against which five blank cheques were issued. It is further stated that the amount was returned by the Petitioner to the father of the Respondent/Plaintiff. The MOS that was entered into on 25.10.2018 recorded that the five cheques given by Petitioner to the father of the Respondent were misplaced. The cheque that was referred to by the Respondent/Plaintiff in the suit was cheque no. 295148 dated 24.08.2018 drawn on State Bank of India for Rs.3,00,000/- (Rupees Three Lakh).

13. An examination of the MOS shows that it states that the father of the Respondent has misplaced the blank cheques and that the loan agreement has been misplaced as well. It further states that the father of the Respondent shall be liable to indemnify the Petitioner for loss and damages. The relevant extract of MOS is set out below:

> *"This Agreement is made at Delhi on this 25 day of October 2018, between: MR. BHARAT KUMAR GUPTA SON OF SHRI RAM SHANKER GUPTA R/O HOUSE* ***NO.256, GALI NO.8, NEW LAHORE SHASTRI NAGAR, DELHI-110092,*** *Hereinafter called the FIRST PARTY.*
>
> *AND*
>
> ***MR. DAYAL SINGH SON OF LATE SHRI PADAM SINGH R/O 97, NEW LAHORE, SHASTRI NAGAR, DELHI-110031,*** *(Hereinafter called the SECOND PARTY).*
>
> *xxx xxx xxx*
>
> ***AND WHEREAS second party has declared that above said blank cheques of State Bank of India and Loan Agreement has been lost/misplace somewhere by the second party.***
>
> ***AND WHEREAS the second party*** *shall also declare that if the above mentioned blank cheque may be found in future then second party will not misuse in any manner and if the second party or any other person shall* ***do so then the second party shall be fully responsible/liable in all manner and punishable by law and second party shall indemnify to the first party for his loss & damages."***
>
> [Emphasis Supplied]

13.1 The MOS does not set out any details in respect of the blank cheques. At this stage, the averment that the blank cheques are the same cheques as the cheque used to file the suit by the Respondent/Plaintiff is something that will require to be proved, given that the MOS does not set out any details with respect to the blank cheques. Thus, a doubt has arisen as to whether the cheques in the MOS and the cheques referred to in the suit are the same, which has led to the Impugned Order being passed by the learned Trial

Court directing that leave to defend/contest is allowed subject to the deposit of 30% of the principal amount in dispute.

14. Given that no such circumstances exist to allow the unconditional leave to defend, this Court finds no infirmity with the Impugned Order, which would warrant interference by this Court in exercise of its revisionary jurisdiction.

15. The Petition is accordingly dismissed. The pending Application also stands closed.

16. The Petitioner shall ensure that the deposit that was directed in the Impugned Order is made within six weeks from today.

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

TARA VITASTA GANJU, J

MAY 15, 2025/r

Click here to check corrigendum, if any