



2026:DHC:3088



\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
% Reserved on: 29<sup>th</sup> January, 2026  
Pronounced on: 15<sup>th</sup> April, 2026  
+ RFA 111/2024, CM APPL. 9110/2024 & 9111/2024

**BIPIN KUMAR**

S/o Sh. Arjun Paswan,

R/o F-43, Ground Floor, Karampura,

Near Labour Court, Moti Nagar, Delhi.

.....Appellant

Through: Mr. Prateek Gupta, Mr. Raghav  
Tiwari, Ms. Vishakha Kaushik,  
Advocates.

versus

**LAKSHMI CHHABRA**

R/o K-13, Ground Floor, Kirti Nagar, New Delhi.

.....Respondent

Through: Mr. Akshay Mahajan and Mr. Manu  
Kaushik, Advocates.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. The present Regular First Appeal under Section 96 read with Order XLI of the Civil Procedure Code, 1908 (*hereinafter referred to as 'CPC'*) has been filed on behalf of the Appellant, assailing the Judgement and Decree dated 25.11.2023, whereby the learned Additional District Judge ***dismissed the Application for condonation of delay in entering appearance and decreed the Suit of the Respondent*** for a sum of Rs.35,00,000/- along with interest at the rate of 8% per annum with effect from 20.12.2022 till realisation.



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2. The Plaintiff/Respondent had instituted a ***Civil Suit bearing Civ. DJ No. 1153/2022 under Order XXXVII CPC for recovery of Rs. 35,00,000/- along with interest @ 12% per annum.***
3. ***Briefly stated***, the case of the Plaintiff/Respondent is that in October 2016, the Defendant/Appellant, fraudulently and dishonestly induced the Plaintiff to advance a sum of Rs.25,00,000/- for a period of 05 years with interest at the rate of 8% per annum, as a friendly loan, on account of his dire need of funds, which he intended to invest in the business entity named “FVG Blue Mediacom”.
4. Accordingly, on 18.10.2016, a friendly loan for a sum of Rs.25,00,000/- was given and the money was transferred through RTGS from the bank account of the Plaintiff.
5. Subsequently, in October 2017, the Plaintiff and her husband contacted the Defendant for payment of annual interest on the said amount for the year 2016-17, but the Defendant evaded the payment on account of his need for more investment in his business entity. In October 2018 and thereafter, on several occasions, the Plaintiff tried to reach the Defendant, but he evaded payment citing medical emergencies and stopped picking the phone calls.
6. Thereafter, in March 2020, due to the national lockdown on account of COVID-19, the Plaintiff tried to contact the Defendant and waited till September 2020, but the Defendant failed to respond.
7. The Plaintiff became suspicious as the interest amount of about Rs.8,00,000/- had accumulated till then. The Plaintiff, along with her husband, was constrained to reach the office of the Defendant, wherein



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Defendant stated that on account of COVID-19, his business had declined and assured that he would return the principal loan amount along with accumulated interest @ 8% per annum, within one year.

8. Subsequently, after one year, i.e. in October 2021, when again the Plaintiff tried to contact the Defendant, he was not reachable. The Plaintiff again reached the office of the Defendant, but to her shock, she came to know that he had not been coming to the Office for a long time and found the same locked.

9. Thereafter, despite many visits to the Office of the Defendant, he was not found available. Finally, the Plaintiff and her husband were able to meet the Defendant in July 2022 at his office, and when the Plaintiff firmly demanded the return of the amount, *he admitted his liability of Rs.35,00,000/- and gave two cheques, Cheque No. 048094 and Cheque No. 058132, both dated 25.07.2022, amounting to Rs.25,00,000/- and Rs.10,00,000/- respectively.* However, the cheques on presentation got dishonoured with the remarks 'No such account' as well as 'Contact drawer/drawee BK & please present again'.

10. The Plaintiff thereafter, sent a Legal Notice dated 08.08.2022, through speed post, but it was refused by the Defendant. The same was thereafter, sent on 18.08.2022 through WhatsApp.

11. *Since the Defendant failed to pay the amount, the Plaintiff filed a Suit for Recovery of Rs.35,00,000/- along with interest at the rate of 12% per annum, which was instituted on 20.12.2022.*



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12. Thereafter, summons for appearance were issued from time to time and were duly served upon the Defendant/Appellant on 15.09.2023, in terms of Order XXXVII Rule 2(3) CPC.

13. **Ld. Additional District Judge** observed *vide* Order dated 20.11.2023 that the Summons so issued, had been refused by the Defendant/Appellant and that no appearance was filed within the prescribed time. In view of Order XXXVII Rule 2(3) CPC, the Plaintiff had become entitled to a Decree in her favour. Thereafter, arguments were addressed and the matter was listed for Judgement.

14. The Defendant/Appellant then moved an Application under Order XXXVII Rule 3(5) CPC seeking leave to defend along with an Application under Order XXXVII Rule 3(7) CPC for condonation of delay in entering appearance. It was submitted in the Application that on 21.11.2023, at about 11:00 A.M., Shri Ashok Kumar Chhabra, husband of the Plaintiff, had informed the Defendant that he had filed a Suit for recovery of Rs.35,00,000/- against him through his wife, which was fixed for Orders on 25.11.2023.

15. The Defendant immediately contacted his advocates, Sh. Piyush Sharma and Sh. Hirnanshu Adhikari, who then inspected the Court record and came to know that the summons of the Suit had been issued for 25.09.2023. However, the Defendant claimed that he had never received the summons and that a false and frivolous report of refusal dated 15.09.2023, had been obtained by the Plaintiff.

16. The Defendant further claimed that the Plaintiff had filed an Application for early hearing on 13.10.2023, which was listed on



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20.10.2023. However, no notice of the said Application was issued to the Defendant and, therefore, he was unable to put in his appearance.

17. The Application for condonation of delay, along with the Application for *leave to defend*, was filed on 25.11.2023. The Defendant/Appellant annexed thereto a copy of the MOU dated 23.05.2023, purportedly executed between him and Sh. Ashok Chhabra, husband of the Plaintiff. The Defendant/Appellant asserted that the service of summons had been manipulated and sought condonation of delay of 60 days in entering appearance.

18. The Application was contested by the Plaintiff, who denied the allegations made in the Application for condonation of delay.

19. The learned Add. District Judge, upon consideration of the material on record, referred to the MOU dated 23.05.2023, wherein reference to the pendency of the present Suit, was found mentioned. It was, therefore, held that the Defendant was aware of the pendency of the suit.

20. The contention of the Defendant that the Report of refusal dated 15.09.2023 had been manipulated was rejected and *consequently, the Application for condonation of delay in entering appearance was dismissed.*

21. The suit of the Plaintiff was ***accordingly, decreed for a sum of Rs.35,00,000/- along with interest @ 8% per annum from 20.12.2022, i.e., the date of institution of the suit, till realisation.***

22. Aggrieved thereby, the **present Appeal has been preferred.**

23. ***The grounds of Appeal*** are that the Plaintiff/Respondent had not approached the *Court with clean hands and had deliberately suppressed material facts.*



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24. The learned Add. District Judge, while deciding the Application for condonation of delay, failed to appreciate that the MOU dated 23.05.2023, between the Defendant/Appellant and the husband of the Plaintiff had been executed, wherein the husband of the Plaintiff had undertaken to withdraw the present Suit for recovery of Rs.35,00,000/-. The Appellant was under the *bona fide* impression that the Suit would be withdrawn, in terms of the MOU dated 23.05.2023.

25. It is only on 21.11.2023, when the Defendant/Appellant met the husband of the Plaintiff, that he came to know about the pendency of the Suit and that it was fixed for Orders on 25.11.2023. He then came to know that the Suit had not been withdrawn; therefore, he engaged counsel and moved the Application for condonation of delay along with his Application for entering appearance.

26. The Appellant further asserted that there was a substantial defence disclosed by him. The Appellant had placed on record the Work Orders executed by him for the Plaintiff. The defence put forth by the Appellant was likely to succeed and, therefore, the delay in entering appearance ought to have been condoned.

27. It was further contended that the Report of the process server was fraudulently obtained by the Plaintiff and her husband. The Plaintiff *firstly* failed to withdraw the Suit in terms of the MOU dated 23.05.2023 and also failed to disclose the execution of the MOU dated 23.05.2023 in the Suit. *Secondly*, despite being aware of the correct address of the Appellant, an incorrect address of the Appellant was provided in the Plaint. *Thirdly*, after execution of MOU dated 23.05.2023, the Plaintiff filed an early hearing



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Application on 20.10.2023, which was allowed on the same day, without issuing any Notice to the Appellant. This reflects that the Plaintiff had obtained the Report of Process Server, fraudulently.

28. It has further been contended that the learned Trial Court failed to consider the material placed on record by the Appellant, which disclosed a substantial defence which was likely to succeed. In this regard, the Appellant relied upon a list of Work Orders executed by him for the husband of the Plaintiff, reflecting that work aggregating to Rs.29,01,219.39/- including GST, had been carried out, which has been ignored by the learned Trial Court.

29. The Appellant has also relied upon certain e-mails sent by the husband of the Plaintiff to him, evidencing assignment of work, which have been annexed to the present Appeal, though not filed along with the leave to defend Application.

30. It has further been contended that the present being a Summary Suit, no specific averment had been made by the Plaintiff to demonstrate that the claim fell within the ambit of Order XXXVII CPC.

31. The Appellant has relied on IDBI Trusteeship Services Ltd. vs. Hubtown Ltd., (2017) 1 SCC 568, wherein the Hon'ble Supreme Court held that if the Defendant satisfies the Court that he has a substantial defence, which is likely to succeed, the Defendant is entitled to unconditional leave to defend the suit. If the defence raised is plausible but not improbable, the Trial Court may impose conditions as to the time and mode of trial, as well as payment into Court for furnishing security.



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32. Similarly, in B. L. Kashyap & Sons Ltd. vs. M/s JMS Steels & Power Corporation & Anr., (2022) 3 SCC 294, it has been held that grant of leave is the ordinary rule and the denial of leave to defend is an exception.

33. The Appellant thus, submitted that the impugned Judgement be set aside and his appearance be taken on record and *Leave to Defend be granted*.

**Submissions heard and records perused.**

34. The Leave to Defend Application of the Appellant was dismissed as the Appellant had failed to file his Memo of Appearance on time and it was filed with a delay of 60 days.

35. It is first necessary to examine whether any sufficient ground exists for condonation of delay of 60 days in entering appearance, for which an Application under Order XXXVII Rule 3(7) read with Section 151 CPC has been filed.

36. The Appellant has contended that, as per the record, the summons were shown to have been served upon him on 15.09.2023 with a report of refusal, which according to him, was manipulated and fraudulent. It has been claimed that he was never served with the summons and that the Report had been procured from the process server.

37. The Appellant, while denying service on 15.09.2023 and asserting lack of knowledge of the Suit, has himself placed on record an MOU dated 23.05.2023 allegedly executed between him and Shri Ashok Chhabra, husband of the Plaintiff/Respondent. The said MOU makes a specific reference to the present Suit as pending before the learned District Judge, apart from other litigations.



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38. Significantly, the MOU dated 23.05.2023 itself reflects the pendency of the present suit, which is much prior to 15.09.2023, when the Summons were reported to have been refused by the Appellant.

39. It is, therefore, evident from the record that the Appellant was well aware of the pendency of the Suit, and there is no reason to disbelieve the report of the Process Server that the summons dated 15.09.2023 were refused by the Appellant.

40. The Appellant has placed reliance on the Clause in the MOU which further recorded that Shri Ashok Chhabra had undertaken to withdraw the civil suits and criminal complaints. The Appellant has sought to explain that he was under the *bona fide* belief that the Suit would be withdrawn, on the assurance of Shri Ashok Chhabra.

41. Such an explanation is difficult to accept. In the backdrop of multiple litigations between the parties, it is inconceivable that the Appellant would rely solely upon such assurances of the husband of the Plaintiff without seeking confirmation or ensuring compliance with the terms of the alleged settlement.

42. Interestingly, the said MOU/Settlement does not stipulate any time-frame within which its terms were to be executed/implemented. Also, the Respondent/plaintiff was not even a party to this MOU, to bind her with its terms. Also, there is not a whisper that the Appellant ever approached the Respondent for the compliance of the terms of MOU. Significantly, the Appellant maintained stoic silence since the execution of MOU dated 23.05.2023 and his filing of the Application, on 25.11.2023.



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43. The learned District Judge has, therefore, rightly observed that the Defendant/Appellant was aware of the pendency of the Suit and had deliberately refused to accept the summons. No sufficient ground for condonation of delay in entering Appearance has been made out, and ***the Application under Order XXXVII Rule 3(7) CPC has been rightly dismissed.***

44. It has further been contended on behalf of the Appellant that he has a valid and substantial defence which is likely to succeed and, therefore, he ought to have been granted an opportunity to defend the suit.

45. In this regard, reference may also be made to the grounds taken in the leave to defend Application, to ensure that *Bonafide* defences, if any, may not be scuttled on the technical grounds of limitation. The defence of the Defendant/Appellant is that Shri Ashok Chhabra, husband of the Plaintiff, was running a business of advertisement under the name and style of *M/s Ashoka Publicity* at Kirti Nagar, New Delhi and had approached the Defendant/Appellant, who was running a business in the name and style of *M/s Unique Impression* at Rama Road Industrial Area, New Delhi in the year 2016.

46. It has been claimed that the Appellant was also running a business firm, namely *M/s Blue Water Mediacom*, and that Shri Ashok Chhabra had agreed to become a partner therein. In this context, a sum of Rs.25,00,000/- was transferred from the account of the Plaintiff to the account of the Appellant, on 18.10.2016. It is further alleged that Shri Ashok Chhabra subsequently withdrew from the Partnership and requested that the said



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amount be adjusted against future Work Orders, which were allegedly reflected in the Books of Account, maintained by the Defendant/Appellant.

47. It is further claimed that in the year 2017, Sh. Ashok Chhabra requested the Defendant/Appellant to issue blank cheques as security, for adjustment of Rs.25,00,000/-. Consequently, the Defendant/Appellant gave two blank security cheques to Sh. Ashok Chhabra, in the year 2017. Reliance has also been placed on the MOU dated 23.05.2023, wherein Shri Ashok Chhabra is stated to have undertaken to withdraw the present Suit.

48. The Defendant/Appellant has further contended that he had already paid amounts exceeding the cheque amount of Rs.25,00,000/- to the husband of the Plaintiff and that nothing remains due. It has also been asserted that no pronote, agreement or affidavit was ever executed between the Plaintiff and the Defendant at any point of time in respect of the alleged loan. Furthermore, the Plaintiff, who is a housewife, has no independent source of income to give a friendly loan of Rs.25,00,000/-.

49. It is the case of the Appellant that the transaction between the Defendant and the husband of the Plaintiff was purely commercial in nature, and that the present Suit has been instituted with *mala fide* intent. It is further contended that the Defendant was entitled to unconditional leave to defend, *inter alia*, to enable proper adjudication, for which reason the delay be condoned.

50. The aforesaid defence of the Defendant/Appellant is required to be examined. The Defendant has not disputed that a sum of Rs.25,00,000/- was transferred to his account on 18.10.2016. However, he has sought to explain the same as an investment made by Shri Ashok Chhabra, for becoming a



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partner in the business of the Defendant, namely M/s Blue Water Mediacom. Significantly, no document whatsoever has been placed on record to substantiate the existence of any such partnership arrangement or investment.

51. The Defendant has further asserted that Shri Ashok Chhabra had subsequently withdrawn from the alleged partnership and had requested that the said amount be adjusted against future work orders in due course. In support thereof, reliance has been placed on certain Work Orders to indicate business dealings between the Defendant and Sh. Ashok Chhabra, the husband of the Plaintiff.

52. The Defendant may have had business relations with Sh. Ashok Chhabra, but they in no manner justify the loan, which had been credited to his account from the account of the Plaintiff, Smt. Lakshmi Chhabra. The transactions between the Defendant and husband of the Plaintiff can in no way be attributed to the Plaintiff, from whose account the money was transferred.

53. It is also pertinent to note that the Defendant has himself claimed that in the year 2016, Shri Ashok Chhabra had withdrawn from the alleged partnership and had stated that the amount of Rs.25,00,000/- would be adjusted against future Work Orders. The documents placed on record by the Defendant himself show that there were regular business dealings between the parties and that work orders were executed for a total amount of Rs.29,01,219.39/-.

54. There is also no explanation forthcoming as to why, if the amount stood adjusted, the Defendant issued two cheques dated 25.07.2022 for



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Rs.25,00,000/- and Rs.10,00,000/-, which were subsequently dishonoured. The issuance of the said cheques, in fact, militates against the defence now sought to be raised and *prima facie* supports the case of the Plaintiff.

55. Despite the plea of adjustment, there is no material on record to substantiate that the sum of Rs.25,00,000/- was ever adjusted against any alleged business transactions. It also remains unexplained as to why, even after a considerable lapse of time since 2016, the Defendant chose to issue the aforesaid cheques on 25.07.2022, which, upon presentation, were dishonoured.

56. The Appellant has further sought to contend that certain amounts, including a sum of ₹4,00,000/-, are stated to have been paid to Shri Ashok Kumar Chhabra, husband of the Plaintiff, and that the same, along with the value of the Work Orders allegedly executed, constituted full satisfaction of the liability. However, no cogent material was placed on record before the learned Trial Court to substantiate such alleged payments or adjustment.

57. The Appellant now seeks to rely upon a Bank Statement at the Appellate stage in support of this plea. In any event, even if such payments are assumed to be made, they having been made to the husband of the Plaintiff, cannot be construed as discharge of the liability arising from the amount admittedly received from the Plaintiff herself. The said contention, therefore, does not merit acceptance.

58. In fact, no plausible or substantial defence has been disclosed by the Appellant/Defendant in the Application seeking leave to defend, which could constitute a valid ground for condonation of delay in filing the said application.



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59. The learned District Judge has, therefore, *rightly dismissed the Application for condonation of delay as well as the Application seeking leave to defend, and rightly decreed the suit in favour of the Plaintiff/Respondent.*

60. There is **no merit in the present Appeal**, which is hereby, dismissed. The pending Applications, if any are disposed of accordingly.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**APRIL 15, 2026/R**