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

+ **RFA 188/2026, CM APPL. 12533/2026**

MANJU RANI

.....Appellant

Through: Mr. Avinash Kumar, Mr. Pramod
Kumar Tiwary and Mr. Lalit Kumar,
Advocates.

versus

BASANTI MALLICK

.....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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24.02.2026

CM APPL. 12534/2026

1. Exemption allowed, subject to all just exceptions.
2. Application is disposed of.

RFA 188/2026, CM APPL. 12533/2026

3. Appeal under Section 96(1) read with Order XLI of CPC has been filed on behalf of the Appellant against Judgment / Decree dated 02.09.2025, whereby Application under Order XXXVII Rule 3(5) of CPC for condonation of Delay in filing Leave to Defend Application was dismissed and Suit of the Plaintiff / Respondent under Order XXXVII of CPC for recovery of Rs.8,25,000/- along with interest @ 9% per annum, was decreed.
4. The Record shows that Suit under Order XXXVII of CPC for recovery of Rs.8,25,000/- was filed on the basis of Cheque of Rs.8,25,000/- dated 10.09.2020 drawn on Indusind Bank, in favour of Plaintiff /



Respondent, which on presentation got dishonoured on 30.09.2020 with remarks “Refer to Drawer”.

5. The Legal Notice dated 23.10.2020 under Section 138 NI Act was served upon the Defendant. On 24.10.2020, she sought time for returning the loan on the ground that she was in financial distress due to COVID-19. No action was taken by the Plaintiff / Respondent by filing Complaint under Section 138 NI Act. Since, 23.10.2020 till July, 2021,

6. Plaintiff / Respondent was in regular touch with the Appellant / Defendant in regard to loan amount, but subsequent to dishonor of cheque, Plaintiff’s husband fell from the terrace on 30.06.2021 and passed away.

7. Therefore, she herself was in severed distress and was unable to communicate with the Appellant. However, in January, 2022 when she tried to communicate with the Appellant. She completely denied her responsibility to pay the cheque amount and started ignoring her request. Consequently, on 05.12.2022, Suit for recovery of Rs.8,25,000/- along with interest @ 9% per annum under Order XXXVII was filed by Plaintiff.

8. Record shows that summons for appearance were sent twice, **firstly** on 12.01.2023 and **secondly**, on 15.03.2023. Memo of appearance was filed on 04.03.2023 and Appellant’s husband also appeared in the Court. On 04.03.2023, Appellant filed Adjournment Application on the ground that she was undergoing treatment.

9. Thereafter, Summons for Judgments were directed to be issued, which were served on 02.12.2023 upon the Appellant’s daughter.

10. Thereafter, Application for Leave to Defend along with Application under Section 5 of Limitation Act was filed on **08.05.2024**, wherein it was stated that the Appellant was in Judicial Custody since **26.08.2023**. It was



further mentioned that Summons for Judgment have been served at her permanent address, however, she was behind the bars in different cases and could not receive the same personally. However, without prejudice and by way of abundant precaution, Defendant authorized her counsel to put appearance on behalf of her and file appropriate Application, as and when required.

11. Defendant's previous counsel had not advised her to file Leave to Defend to the present Suit. On last date of hearing the Defendant's husband appeared and came to know that some action was required to be done by the Defendant's counsel, which was not intimated. Later Defendant's husband informed her about the Court hearing and inaction of her counsel, but the Defendant could not do anything, as she could not approach her previous counsel. Defendant waited for some days but her previous counsel did not come for meeting in Jail.

12. Finally, she decided to change her counsel, who advised to file Leave to Defend. Thereafter, Defendant filed an Application for condonation of Delay in filing the Leave for Defend to the Suit. It was claimed that delay in filing the Leave for Defend, was for the aforesaid reasons.

13. The *grounds on which the Leave was sought* to be defended, were also disclosed in the Application, which were that Plaintiff's Suit was barred under Section 03 of Punjab Registration of Money Lenders Act, 1938, as there was no relationship between the Plaintiff and Defendant and there was no question of giving the friendly loan. It was further asserted that no loan was taken, but in fact, a Cheque had been issued in a Self Help Group, which has been misused by the Appellant.

14. The Application for condonation of delay in filing Leave to Defend



and Leave to Defend, were thus filed.

15. Learned District Judge, in the impugned Order dated 02.09.2025, considered the contentions of the Appellant and rejected the same by observing the Leave to Defend was barred by limitation and Plaintiff's Suit was decreed.

16. Aggrieved by the impugned Judgment / Decree dated 02.09.2025, present Appeal has been filed. The ground of challenge are that there is grave error in rejecting the Appellant's Application under Order XXXVII Rule 3(5) of CPC, despite the Appellant disclosing *bona fide*, plausible and substantial triable issues, which by settled law, mandatorily required to grant unconditional Leave to Defend.

17. The defences taken by the Appellant, are: Misuse of a blank signed Cheque issued as security; Absence of any written loan agreement or acknowledgment; Different ink and handwriting on the Cheque; Absence of dates of alleged advancement; Absence of proof of consideration or financial capacity and Serious disputes regarding limitation. The Court cannot weigh evidence or conduct a mini-trial and even fairly arguable defences are sufficient.

18. Order XXXVII of CPC is intended only for cases of clear, admitted and unquestionable liability. In the present case, the liability itself is entirely disputed and unsupported by any contemporaneous document. There is no written contract, no acknowledgment of debt, no contemporaneous Receipt or document, but there is only disputed Cheque.

19. Summons were repeatedly sent at wrong address, service was admittedly not effected and yet the Plaintiff's Suit has been decreed. The appearance of counsel without proper service on the party, cannot cure the



defect of non-service and any Decree passed in violation of mandatory procedure, is liable to be set aside.

20. As per the submissions made in the Complaint, the alleged loans were advanced intermittently starting from 2015, whereas the Suit has been instituted on 05.12.2022. Any alleged advance prior to 05.12.2019, is clearly barred by limitation, which cannot be revived merely by issuance of a Cheque, in the absence of a valid acknowledgment under Section 18 of the Limitation Act.

21. Moreover, the Respondent has to establish her financial capacity to advance Rs.8,25,000/- in cash, such as Income-Tax Returns, Bank statements, withdrawal proofs, Receipts or witnesses.

22. In cases involving large cash transactions, Courts are required to apply strict scrutiny and absence of proof of financial capacity itself raises serious triable issues, which have been completely ignored by the learned Trial Court. Presumptions under NI Act are to be rebutted and cannot dispense the trial in a civil proceeding when plausible defenses are raised.

23. Respondent had not filed single document disclosing her financial capacity along with the Complaint, which were required to be proved through trial. Hence, prayer is made that impugned Judgment / Decree dated 02.09.2025 be set aside.

Submissions heard and record perused.

24. The Leave to Defend Application was filed on 08.05.2024, while the summons for Leave to Defend were served on 02.12.2023. The grounds given by the Appellant for inability to file the Leave to Defend within ten



days of service on 02.12.2023 was that she was in Judicial Custody since 26.08.2023. Pertinently, there is no duration during which she was in Judicial Custody, has been given and there is nothing indicated in the Condonation Application as to when she got released from Jail.

25. Even otherwise, it is stated in the Application itself that on receiving the summons for Appearance, the learned Counsel had been instructed to appear and file the requisite Applications before the learned Court. The husband of the Appellant had appeared on 04.03.2023 and an Application for adjournment was filed on the ground that she was undergoing treatment. There was no mention in this Application, of her being in Judicial Custody.

26. Moreover, there is no challenge that the summons for Leave to Defend were served on 02.12.2023 through the daughter Priyanka. Thereafter, the husband had been appearing on behalf of the Appellant. It is stated in the Application itself that Defendant had authorized her counsel to move appropriate Application.

27. Even if the plea of the Defendant/Appellant is accepted that she was in Judicial Custody, but her own submissions in the Condonation Application reflect that she had engaged a Counsel through her husband, who had been regularly appearing. There was no handicap in her engaging a Counsel or appearing before the Court. Pertinently, it is through the Counsel that earlier Memo of Appearance was filed on 04.03.2023.

28. Even if the Defendant was in Judicial Custody, it does not imply that she was not duly served with the summons of the Suit or was in any way limited in seeking Legal Representation. There is no cogent explanation given for her not filing of Leave to Defend Application since the date of service on 02.12.2023 till 08.05.2024.



29. As has become a norm and a practice, the Appellant has stated that it was her Counsel who did not advise her to file Leave to Defend Application in the present Suit, which was not filed. It is pertinent to observe that summons for Leave to Defend itself mentions about the Leave to defend to be filed within ten days. The summons once received on behalf the Appellant, could have been read not only by her but also her family members. It cannot be said that they were not told by their counsel, especially once the summons for Leave to Defend itself stated that the Leave to Defend was required to be filed in ten days.

30. Learned District Judge in the impugned Order dated 02.09.2015, therefore, rightly observed that there was no ground for Condonation of Delay in filing the Leave to Defend Application.

31. Simultaneously, the learned District Judge also considered the grounds on which the Leave to Defend was filed namely that the Plaintiff did not have a License under Punjab Registration of Money Lenders' Act, 1938. However, the Plaintiff had asserted that it was a friendly loan and, therefore, the question of having a license under the Money Lenders' Act did not arise. Moreover, the Loan was supported by a Cheque which admittedly had the signatures of the Appellant. Her explanation that she had issued in a Self Help Group, on the face of it, was not tenable and had been rightly rejected by the learned District Judge.

32. Thus, the learned District Judge while considering the Application under Order XXXVII Rule 3(5) of CPC, while declining the Condonation of Delay in filing the Leave to Defend Application, also considered that the Leave to Defend did not disclose any sufficient cause, for the Court to condone the delay.



33. There is no merit in the present Appeal, which is hereby dismissed.
Pending applications are disposed of, accordingly.

NEENA BANSAL KRISHNA, J.

FEBRUARY 24, 2026/R/VA