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

\+ RFA 268/2026, CM APPL. 18186/2026 and 18188/2026

VISHWANATH OJHA
Prop. M/s G. Trading Corporation Vishwanath Ojha
R/O 37, Saini Enclave, Delhi-1 10092
Second Address D-177, D Block,
Near Pani Ki Tanki, Nand Vihar, Delhi-110092. .....Appellant

Through: Ms. Richa Kapoor, Mr. Aryan Prasad, Advocates.

versus

1. **SURESH LOHIA**
S/O Late Sh. Uday Ram
R/O 2153, TALIWARA, SADAR BAZAR,
DELHI-1 10006

2. **MANOJ KUMAR MISHRA**
S/O SH. B.P. MISHRA,
R/O B-58, Shanti Nagar, Delhi-110094
Second Address Chamber No. 422-423,
Civil Side, Tis Hazari Courts, Delhi .....Respondents

Through: None.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

O R D E R

% **23.03.2026**

CM APPL. 18187/2026 (Exemption)

1. Exemption allowed, subject to all just exceptions.

2. The Application stands disposed of.

RFA 268/2026

3. Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) read with Order XLI Rule 1 CPC,

has been filed on behalf of the Appellant against the Judgment and decree dated 20.01.2026 passed by the learned District Judge-9, Delhi wherein the **Leave to Defend of the Appellant/Defendant, has been denied** and the Suit of the Plaintiff for **Recovery of Rs.10,00,000/- along with the interest @6% p.a., has been decreed**.

4. The ***facts in brief*** are that the Plaintiff had filed a *Suit for Recovery of Rs.10,00,000/- along with the interest @15% p.a.* The claim of the Plaintiff was that he had advanced Rs.10,00,000/- as loan to the Defendant No. 1/Appellant, on the guarantee of the Defendant No. 2, Mr. Manoj Kumar Mishra, on two different dates i.e., 5.12.2020 and 10.12.2020, and the loan was repayable within three months along with interest @15% p.a.

5. To secure this loan, the Defendant No. 1 had issued five cheques of Rs.2,00,000/- each, which were dishonored, on presentation. A Legal Notice dated 28.10.2022 was duly served, despite which no payment was made. Hence, based on the five dishonored cheques, *Suit under Order 37 Rule 3(4) CPC* had been filed, for Recovery of the loan amount of Rs.10,00,000/- along with the interest.

6. The *Defendant No. 2, Mr. Manoj Kumar Mishra*, despite service of Summons for appearance under Order 37 Rule 3(4) CPC, failed to appear and file his appearance.

7. *The Appellant/Defendant No. 1* filed his *Leave to Defend Application*. He took the defence that the Plaintiff had deliberately and intentionally concealed the material facts and has not approached the Court, with clean hands. Defendant No. 1/Appellant does not know the Plaintiff and had never met or had any talks with him at any point of time and there is no loan transaction between the Plaintiff and Defendant No. 1.

8. The Defendant No. 1 explained that he had taken a loan of Rs.2,75,000/-from the Defendant No. 2, Mr. Manoj Kumar Mishra, who had taken signatures and thumb impressions on blank papers, stamp papers and two Promissory Notes. He had also *given six blank cheques as security* for the loan amount. He returned the loan amount of Rs.2,00,000/- to the Defendant No. 2. However, the Defendant No. 2 to cheat the Defendant No. 1, failed to return the cheque on one pretext or the other. To grab the hard-earned money of the Defendant No. 1, he handed over these cheques to Mr. Suresh Lohia, Plaintiff/Respondent No.1, who sent a false legal Notice on frivolous grounds.

9. It was claimed that the Plaintiff and the Defendant No. 2 were blackmailing him. He made a Complaint dated 21.11.2022 to SHO, Police Station Sabzi Mandi. The Defendant No. 1 undertook to pay the balance amount of Rs.75,000/-, to the Defendant No. 2 in case the Plaintiff returned the documents/cheques given to the Defendant No. 2.

10. Additionally, the Appellant claimed that out of the agreed loan of Rs.2,75,000/-, only Rs.1,75,000/- was advanced to him while Rs.1,00,000/- was deducted as a commission. He claimed to have already paid Rs.1,00,000/- leaving a balance of Rs.75,000/-.

11. The Leave to Defend was accordingly, sought by the Defendant No. 1, the **learned District Judge *vide* the impugned Judgment,** held that there were discrepancies about the amount of loan as mentioned in the Police Complaint made to Police Station Sabzi Mandi. Moreover, the Complaint did not bear the acknowledgment or the stamp of the Police Station Sabzi Mandi.

12. It was observed that while the Defendant No. 1 had stated the return of Rs.1,00,000/- in the Police Complaint, but Legal Notice dated 16.11.2022 mentioned repayment of Rs.2,00,000/-. The Defendant No. 1 was changing his own version. Furthermore, he had not taken any steps for filing a Suit for Mandatory Injunction and Declaration against either the Plaintiff or the Defendant No. 2. Furthermore, if he was taking a stand that he has already paid back the loan in part to the Defendant No. 2, who failed to return the cheques given as security, then he cannot assert collusion with the Plaintiff. The defence taken by the Defendant No. 1, did not raise any triable issue and the Leave to Defend was rejected.

13. Thus, the Suit for Recovery of Rs.10,00,000/- along with the interest @6% p.a. was decreed against the Appellant/Defendant No. 1, as well as the Defendant No. 2, being the guarantor to the loan.

14. Aggrieved by the said Judgment, the present Appeal has been preferred.

15. The main ***grounds of challenge*** are that the Judgment is based on erroneous, perverse, appreciation of facts and evidence. The alleged contradiction noted in the Legal Notice dated 16.11.2022 and the Police Complaint dated 21.11.2022, has been misconstrued, while ignoring the consistent pleadings in both the documents that the actual loan was Rs.2,75,000/- and not Rs.10,00,000/- and that only Rs.75,000/- remained to be paid. There were no material contradictions, but it arose from the fact that the Legal Notice failed to mention that Rs.1,00,000/- had been deducted by the Respondent No. 2, while giving the loan amount, while this fact was explicitly mentioned in the Police Complaint. The non-mention of the commission amount in the Legal Notice, is not a ‘contradiction’, especially

when essence of both the documents, is identical.

16. It is also submitted that the defence of the Appellant, has been wrongly rejected, even though serious triable issues were raised, which merited grant of unconditional leave to defend.

17. Reliance has been placed on *IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd.*, (2017) 1 SCC 568. Reliance is also placed on *Asstt. Director of Inspection Investigation vs. A.B. Shanthi,* 2002 (6) SCC 259 wherein it was observed that Section 269SS of the Income Tax Act, 1961, barred the cash transactions.

18. The five cheques bear the date 12.10.2022 and all the cheques were presented on the same date. The uniformity of dates on the cheques and their presentation together on the same date, raises the serious inference of cheques being blank cheques filled in by the Respondent Nos. 1 and 2 with fabricated dates, thereby reflecting that the Appellant had not issued them voluntarily in discharge of his genuine debt.

19. The observations of the learned Trial Court that the Appellant had not filed any Suit for Mandatory Injunction and Declaration against the Respondent Nos. 1 and 2 for return of cheques, is erroneous. In fact, the Appellant had issued a Legal Notice and made a Police Complaint, to put the Respondent No. 2, on notice.

20. Reliance is placed on *B.L. Kashyap and Sons Ltd. Vs. M/s Jms Steels and Power Corporation* (2022), 3 Supreme Court Cases 294 wherein it was held that the Leave to Defend Application must be allowed, if the Defendant satisfies the Court that he has raised the substantial defence, which is fair and *Bonafide.*

21. It is, therefore, submitted that there were triable issues raised by the Appellant in his Leave to Defend, which have been erroneously dismissed. Hence, a prayer is made that the Impugned Judgment and Decree dated 20.01.2026 be set-aside and the Leave to Defend Application of the Appellant, be allowed and he be given an opportunity to lead his defence in the Suit.

Submissions heard and the record perused.

22. Defendant No.1 / Appellant had sought leave to defend the Suit for recovery of Rs.10,00,000/- along with interest @ 15% per annum filed by the Plaintiff/Respondent. Plaintiff/Respondent had claimed that this was loan extended by him to Defendant No.1/Appellant in December 2020, considering the financial difficulties pleaded by him, with Defendant No. 2 standing as guarantor for return of the amount. Two Receipts were separately prepared and to secure the loan amount, six cheques had been given by Defendant No.1 / Appellant.

23. The primary ground for seeking leave to defend the present Suit, was that he did not know the Plaintiff and had never met him. In fact, he knew only Defendant No. 2, *Sh. Manoj Mishra*, and had taken the loan of Rs.2,75,000/- from him. However, Appellant / Defendant No.1 admitted that while taking loan, his signatures on blank papers, receipts and six blank cheques were taken, though it is alleged that they have been misused by the Plaintiff / Respondent.

24. The ***first aspect*** which emerges, is that while Defendant No.1 was claiming to have taken Rs.2,75,000/- as loan, but had asserted that he had returned Rs.2,00,000/- to Defendant No.2 and only Rs.75,000/- remained to be paid. Interestingly, he has not denied having signed the Receipts or

having given the signed cheques allegedly to Defendant No.2, who had arranged the loan and through whom he had received the loan.

25. The case of the Plaintiff is that while he gave the loan of Rs.10,00,000/- to Defendant No.1, Defendant No.2 assured the return and stood as guarantor. Defendant No.1 admittedly took a loan; *the question is whether it was of Rs.10,00,000/- or Rs.2,75,000/-, as asserted by the Appellant.*

26. In this regard, learned District Judge has rightly highlighted the contradiction in Legal Notice dated 16.11.2022 sent by Appellant to Defendant No.2 and a separate Legal Notice to the Plaintiff, wherein he claimed that he had already refunded Rs.2,00,000/- and that he is willing to pay balance amount of Rs.75,000/-. Interestingly, thereafter, he made a Complaint to the SHO on 21.11.2022, wherein he took a revised version that though he had taken loan of Rs.2,75,000/-, but Defendant No.2 took Rs.1,00,000/- as his commission and disbursed only Rs.1,75,000/-, out of which, Rs.1,00,000/- have already been paid and only Rs.75,000/- remains to be paid.

27. While the Appellant has claimed that there was no inherent contradiction, but only a further explanation in the Police Complaint of the manner of disbursement, but it cannot be overlooked that there was a categorical assertion that loan of Rs.2,00,000/- had been returned by the Appellant. Whether it was Rs.1,00,000/- or Rs.2,00,000/-, becomes material, especially when aside from making bald assertions of return, Appellant fails to disclose the *date, time and manner*, in which the alleged loan amount was returned by him, to Defendant No.2. There are inherent contradictions and the defence of return of part loan amount, is ambiguous and is in fact, a

sham defence taken by the Appellant.

28. In this context, it is also pertinent to note that allegedly the loan was taken on two dates, i.e. 05.12.2020 and 10.12.2020, but the Appellant pertinently, remained silent and did not write any Letter to the Appellant or Defendant No.2 regarding the payment of loan. He has claimed that he had sought return of blank signed papers and cheques from Defendant No.2, who kept on avoiding it for some reason.

29. Furthermore, the conduct of the Appellant is not that of reasonable prudent person. Had he returned part loan amount allegedly to Defendant No.2, it is unlikely that he would not vociferously seek return of the documents or at least inform his Bank against encashment of these cheques. Nothing had been done on behalf of the Appellant till Legal Notice dated 28.10.22 was served by the Plaintiff. It is only then that the Appellant to create a defence, gave Notice dated 16.11.2022 to Defendant No.2 as well as the Plaintiff; the Police Complaint followed thereafter on 21.11.2022. It is clear from the dates that Legal Notice and Police Complaint of the Appellant, that these Notices/Police Complaint were an *afterthought,* intended to create a defence for himself.

30. ***Next pertinent question*** is the quantum of loan taken by Defendant No.1. The Plaintiff had asserted that he had given Rs.5,00,000/- each on 05.12.2020 and 10.12.2020, for which two Receipts of the same date had been executed. Appellant has not denied the Receipts and had only taken spacious ground of his signatures having been obtained on blank papers.

31. Not only this, Appellant admits having given six blank cheques, but has not been able to explain why six cheques were given for securing the loan amount of Rs.2,50,000/-. Even otherwise, having given the cheques as

already noted, there is no reason for him not to seek the return, when he had allegedly made the payments.

32. Promptitude of the Appellant is noticeable in giving Notice dated 16.11.2022 and making Police Complaint dated 21.11.2022, immediately after Legal Notice dated 28.10.2022 was served by the Plaintiff.

33. **Lastly**, the Receipts coupled with five cheques, which on presentation got dishonored, proves that the loan of Rs.10,00,000/- was given, which has not been paid by the Appellant.

34. Thus, the grounds on which leave to defend has been sought, are sham grounds, having no credibility and have been rightly rejected by the Ld. District Judge.

35. There is no merit in the present Appeal, which is hereby, **dismissed** along with pending Applications.

NEENA BANSAL KRISHNA, J.

MARCH 23, 2026/RS/*R*