



2026:DHC:1442



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

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Date of decision: 12th February, 2026

+ RFA 399/2019 with CM APPL. 20216/2019 and CM APPL. 42402/2019

RADHEY SHYAM GARG

.....Appellant

Through: Mr. Rohit Kumar Modi, Advocate.
(Through VC)

versus

M/S VARDHMAN ASSOCIATES PVT LTD

.....Respondent

Through: Mr. Shalabh Singhal, Mr. Vishwajeet
Kumar and Ms. Vaishali Verma,
Advocates**CORAM:****HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**

1. The present appeal has been filed on behalf of the appellant (defendant in the suit) under Section 96 of the Code of Civil Procedure, 1908 (hereinafter '**CPC**') seeking setting aside of the judgment dated 7th February 2019 (hereinafter '**impugned judgment**') passed by Additional District Judge-03, Rohini, North Districts, Delhi (hereinafter '**Trial Court**') in CS No. 1776/2016 (Old Suit No. – CS(OS) 3373/2012) titled **M/s Vardhman Associates Pvt. Ltd. v. Radhey Shyam Garg**.

2. By way of the impugned judgment, the application filed by the appellant/ defendant under Order XXXVII Rule 4 of the CPC seeking setting aside of the decree dated 16th May 2013 has been dismissed.



3. Earlier, this Court *vide* order dated 16th May 2013 had decreed the aforesaid suit in favour of the respondent/ plaintiff for recovery of Rs. 20,88,055/- along with interest @ 11% p.a. from 15th February 2011 till the date of institution of the suit, *pendent lite* and future interest till the date of recovery as well as costs.

4. The parties shall hereinafter be referred to as per their status before the Trial Court.

BRIEF FACTS

5. Brief facts relevant for deciding the present appeal are set out below:

5.1. The defendant made a booking for allotment of residential unit with M/s Ansal Properties & Infrastructure Limited (hereinafter '**Ansals**') and was allotted a flat being Unit no. 08/302, Tower no.8, 3rd Floor, Sunshine County, Sushant City, Kundli, Sonapat, Haryana. However, booking of the aforesaid flat had been cancelled by Ansals due to non-payment of due instalments by the defendant.

5.2. The plaintiff assisted the defendant in getting his flat booking restored on terms mutually agreed to between Ansals, the defendant and the plaintiff *vide* letter dated 18th January 2011. The plaintiff made an adjustment for the amount of Rs. 20,88,055/- towards payment for the aforesaid flat allotted to the defendant in exchange of a commission recoverable by the plaintiff from Ansals.

5.3. Based on the aforesaid, Ansals restored the allotment of the aforesaid flat in favour of the defendant.

5.4. In consideration of the aforesaid payment made by the plaintiff to Ansals, the defendant issued two cheques totalling a sum of Rs. 20,88,055/- in favour of the plaintiff, the details of which are given below:



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Sl.	Cheque No.	Dated	Amount (Rs.)	Drawn on
1.	148024	15-01-2011	17,00,000/-	Indian Overseas Bank
2.	148025	15-02-2011	3,88,055/-	-do-
Total =			20,88,055/-	

(Rupees Twenty eight lacs eighty eight thousand and fifty five only)

5.5. The defendant also gave an undertaking dated 25th January 2011 confirming the issuance of the aforesaid cheques.

5.6. Both the aforesaid cheques were dishonoured.

5.7. The plaintiff initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter '*NI Act*'). However, the said complaint was dismissed on the ground of limitation.

5.8. Accordingly, the aforesaid suit was filed as a summary suit under Order XXXVII of the CPC claiming a sum of Rs. 20,88,055/- along with interest of Rs. 8,76,983/- calculated @ 24% p.a.

5.9. The summons for appearance were issued to the defendant on 12th December 2012 and were served on 6th March 2013. However, the defendant did not enter appearance in a timely manner.

5.10. Subsequently, summons for judgment were issued to the defendant on 23rd April 2013, which were served upon the defendant on 2nd May 2013.

5.11. Since the defendant failed to file an application for leave to defend within the prescribed time, the aforesaid suit for recovery was decreed against the defendant along with interest and costs on 16th May 2013. The relevant extracts from the order dated 16th May 2013 are set out below:

"4. The defendant having failed to cause appearance or applied for leave



to defend, the consequences have to follow.

5. There is no Agreement between the parties for payment of interest. Considering the nature of the transaction between the parties, it is deemed appropriate to confine the rate of interest to 11% per annum.

6. Accordingly, a decree is passed in favour of the plaintiff and against the defendant for recovery of Rs.20,88,055/- together with interest thereon @ 11% per annum from 15th February, 2011 till the date of institution of the suit, pendente lite and future till the date of payment/ recovery. The plaintiff shall also be entitled to costs of the suit as per schedule.”

5.12. Subsequently, the defendant filed an application under Order XXXVII Rule 4 of the CPC *inter alia* on the ground that he was not informed about the service of summons in the aforesaid suit. The said application was dismissed for non-prosecution on 7th August 2014.

5.13. Thereafter, *vide* order dated 29th July 2015, the aforesaid application was restored subject to costs of Rs. 25,000/-.

5.14. *Vide* order dated 18th March 2016, the aforesaid application was transferred to the District & Session Judge (North District), Rohini Court, Delhi having the pecuniary jurisdiction.

6. The aforesaid application moved by the defendant was dismissed by the Trial Court *vide* impugned judgment dated 7th February 2019. The Trial Court returned the following findings:

- a) The defendant was duly served through his wife as per Order V Rule 15 of the CPC.
- b) The defendant had admitted that the amount of Rs. 20,88,055/- was adjusted by Ansals in January 2011 and the same was debited in the account maintained by the plaintiff. The defendant had also admitted issuance of the cheques and his signatures on the undertaking dated 25th January 2011.
- c) The defence taken by the defendant that he had returned an amount of



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Rs. 13,75,000/- to the plaintiff in cash was flimsy and implausible as the defendant did not produce any cash receipt.

7. Aggrieved by the impugned judgment, the present appeal has been filed by the defendant before this Court.

8. Notice in the present appeal was issued on 30th April 2019 and on the same date, the judgment dated 16th May 2013 was stayed, subject to the defendant depositing 2/3rd of the decretal amount. It was further directed that the aforesaid amount shall be kept in a fixed deposit.

9. The defendant filed an SLP against the aforesaid order, which was dismissed by the Supreme Court *vide* order dated 13th August 2019, while granting further time to the defendant for depositing the aforesaid decretal amount.

10. Accordingly, the amount as directed by this Court was deposited and the same has been put in an FDR.

SUBMISSIONS ON BEHALF OF THE PARTIES

11. Counsel for the defendant has made the following submissions:

11.1 The Trial Court disregarded the defence taken by the defendant that the summons never personally reached the defendant on account of his ill-health.

11.2 Since the plaintiff had claimed interest in the suit and there was no agreement between the parties with regard to interest, the present suit was not maintainable as a summary suit under Order XXXVII of the CPC. Reliance is being placed by the appellant on the judgment of this Court in ***GE Capital Services India v. Dr. K.M. Veerappa Reddy***, 2015 SCC OnLine Del 13007.

11.3 The application filed by the defendant under Order XXXVII Rule 4 was rejected on account of the failure of the defendant to deposit the cost of Rs. 25,000/- imposed by the Trial Court. However, the cost of Rs. 25,000/- was



duly paid by the defendant.

12. *Per contra*, counsel appearing on behalf of the plaintiff relies upon the observations made in the impugned judgment and makes the following submissions:

12.1. The defendant has failed to show any 'special circumstances' as stipulated in Order XXXVII Rule 4 of CPC for setting aside the decree in a summary suit.

12.2. The alleged medical issue of backache as stated by the defendant cannot be a ground for disregarding service of summons upon the defendant and would not amount to 'special circumstances'.

12.3. The medical certificate placed on record by the defendant was dated after the date on which the defendant was served with the summons.

12.4. As regards the maintainability of the aforesaid suit under Order XXXVII of the CPC, it is submitted that sub-rule 2(b) of Rule 1 of Order XXXVII of the CPC as well as Section 80¹ of the NI Act provide for claim of interest. In this regard, reliance is being placed on the following judgments:

- a. *Sushila Mehta v. Bansilal Arora*, 1981 SCC OnLine Del 306
- b. *Rajesh Ahuja v. Manoj Mittal*, 1995 SCC OnLine Del 618
- c. *Sanjay Kohli v. Vikas Shrivastava*, 2012 SCC OnLine Del 2253
- d. *EMG Hospitality Private Limited v. Automobili Italia Private Limited*, 2014 SCC OnLine Del 6638

ANALYSIS AND FINDINGS

¹ **80. Interest when no rate specified.**— When no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of eighteen per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.



13. I have heard counsel for the parties and examined the record of the suit.

14. As regards the service of summons upon the defendant, the Trial Court has correctly noted that the summons were duly served upon the wife of the defendant and this would amount to a valid service in terms of Order V Rule 15 of the CPC. It was also rightly observed that the defendant in his application under Order XXXVII Rule 4 of the CPC has not stated that he was not present in the house when the summons for judgment were served. The relevant observations of the Trial Court in this regard are set out below:

“I have perused the report of service of summons for judgment sent to the defendant. As per report on the summons for judgment, defendant was served through his wife Geeta Devi. Under Order 5 Rule 15 CPC, service on the adult member of the family is a valid service. The defendant in his application has not stated that he was not present in the house when the summons for judgment were served. He has pleaded that he was bed ridden and was present in his house, however, his family member did not inform him. The said plea is too flimsy and without any basis and seems to be an afterthought.”

15. Pertinently, the medical certificate produced by the defendant is dated 10th May 2013 whereas the first summons were already served upon the defendant on 6th March 2013 and summons for judgment were served upon him on 2nd May 2013. Further, the medical certificate does not reveal any spinal cord injury or any other serious ailment. The only ailment mentioned in the medical certificate was ‘acute back pain’. No valid reason has been provided by the defendant which prevented him from presenting the memo of appearance within the prescribed time.

16. In ***TVC Skyshop Limited v. Reliance Communication Infrastructure Limited***, (2013) 11 SCC 754, the Supreme Court revisited the scope of the expression ‘special circumstances’ under Order XXXVII Rule 4 of the CPC and upheld the dismissal of the defendant’s application under Order XXXVII



Rule 4 of the CPC. The relevant extracts from the aforesaid judgment are set out below:

“10. The expression “special circumstances” appearing in Order 37 Rule 4 was considered by this Court in Rajni Kumar v. Suresh Kumar Malhotra [(2003) 5 SCC 315] and it was observed: (SCC p. 318, para 9)

“9. The expression ‘special circumstances’ is not defined in the Civil Procedure Code nor is it capable of any precise definition by the court because problems of human beings are so varied and complex. In its ordinary dictionary meaning it connotes something exceptional in character, extraordinary, significant, uncommon. It is an antonym of common, ordinary and general. It is neither practicable nor advisable to enumerate such circumstances. Non-service of summons will undoubtedly be a special circumstance. In an application under Order 37 Rule 4, the Court has to determine the question, on the facts of each case, as to whether circumstances pleaded are so unusual or extraordinary as to justify putting the clock back by setting aside the decree; to grant further relief in regard to post-decree matters, namely, staying or setting aside the execution and also in regard to pre-decree matters viz. to give leave to the defendant to appear to the summons and to defend the suit.”

11. in the same judgment, the Court considered the scope of Order 37 Rule 4 and observed: (Rajni Kumar case, SCC p. 320, para 11)

“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 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. It is, therefore, not enough for the defendant to show special circumstances which prevented him from appearing or applying for leave to defendant, he has also to show by affidavit or otherwise, facts which would entitle him leave to defend the suit. In this respect, Rule 4 of Order 37 is different from Rule 13 of Order 9.””

[emphasis supplied]

17. Based on the aforesaid, in my opinion, there were no ‘special circumstances’ disclosed by the defendant for the Trial Court to set aside the decree passed under Order XXXVII Rule 4 of the CPC.

18. As regards the merits, it is to be noted that the defendant has not disputed that the sum of Rs. 20,88,055/- was due and payable by him to the plaintiff. The only defence taken was that the defendant had paid an amount of Rs. 13,75,000/- to the plaintiff in cash. In this regard, the Trial Court has correctly observed in the impugned judgment that no cash receipt has been produced by the defendant to show that he had paid the aforesaid amount to the plaintiff and held that the aforesaid defence was not plausible. The relevant observations made by the Trial Court are set out below:

“Even otherwise also, defendant in his application has admitted the issuance of the cheques and his signatures on the undertaking. He has pleaded that he has signed on the blank paper and the cheques were security cheques. The fact that the cheques were given by the defendant to the plaintiff pursuant to their oral agreement that the plaintiff would either get the interest waived or reduced with respect to the flat booked by the defendant with Ansal Properties is not disputed. Defendant has admitted that the amount of Rs.20,88,055/- was finally adjusted by Ansal Properties in January 2011 and the same was debited in the account maintained by the plaintiff. Defendant has merely stated that he has returned the amount of Rs.13,75,000/- to the plaintiff in cash after withdrawing the said amount from his various accounts and only the amount of Rs. 1,33,760/- is due against him after adjustment of the commission of the previous transactions. No cash receipt has been filed by the defendant to show that he has paid the said amount to the plaintiff. The plaintiff has denied receipt of any such amount. The defence taken by the defendant is too flimsy and not plausible.”



19. On the aspect of maintainability of the aforesaid suit under Order XXXVII of the CPC, the plaintiff has relied upon various judgments, which are being discussed below:

- a) In ***Sushila Mehta*** (supra), a coordinate bench of this Court had observed that under Order XXXVII Rule 1 of the CPC, a party can recover liquidated amount of money with or without interest arising under a written contract and the claim for interest can be joined with the claim for money under Order XXXVII of the CPC. Paragraph 15 of the said judgment is set out below:

“15. Fourthly, counsel submitted that assuming that the plaintiff is entitled to sue for recovery of Rs. 1,00,000 on a written contract, she is not entitled to join the claim for Rs. 36,000 which, he said, is a claim in the nature of damages. I do not agree. It is a claim for interest. Whether she is entitled to interest or not is another question. Order 37 Rule 1 says that the plaintiff can “recover a debtor liquidated demand in money payable by the defendant, with or without interest, arising on a written contract.” The claim for interest can be joined with a claim for money under Order, 37 Rule 1(2)(b)(i) CPC This is clear from the statute.”

[emphasis supplied]

- b) In ***Rajesh Ahuja*** (supra), a coordinate bench of this Court noted that the suit pertained to a negotiable instrument which is subject to payment of interest under the provisions of the NI Act. Accordingly, the Court rejected the defendant’s plea that the suit is not governed by the provisions of Order XXXVII of the CPC because the plaintiff therein had made a claim for interest. The relevant extracts from the aforesaid judgment are set out below:

“10. The case before me is based on a negotiable instrument and if the provisions of Section 79 and 80 of the Negotiable Instruments Act are seen then it would be quite clear that every negotiable instrument is subject to payment of interest. The interest claimed by the plaintiff in this case is claimed on the amount of the cheque given by the



defendant. The said claim of him is governed by Section 80 of the Negotiation Instruments Act, 1881. Consequently, the claim of interest made by the plaintiff is a claim of interest under an enactment. Therefore, the said claim of money is covered by the provisions of Sub-rule (2)(b)(ii) of Rule 1 of Order XXXVII of the Code of Civil Procedure. Therefore, in view of the provisions of Section 80 of the Negotiable Instruments Act and Sub-rule (2)(b)(ii) of Rule 1 of Order XXXVII, the contention of the learned counsel for the defendants that as the plaintiff has made a claim of interest the suit will not fall within the provisions of Order XXXVII is not tenable...”

[emphasis supplied]

- c) In **Sanjay Kohli** (supra), another coordinate bench of this Court observed that the legal position is clear that even if there is no legal agreement between the parties to claim any specified interest, the plaintiff is entitled to claim interest in a summary suit in terms of Section 80 of the NI Act read with Order XXXVII of the CPC. The relevant observations made in paragraph 11 of the aforesaid judgment is set out below:

*“11. The other contention raised by the counsel for the defendant no.1 is that the amount of interest cannot be claimed in a summary suit under Order XXXVII is also devoid of any merit. **This issue is no more res integra as the settled legal position is that even if there is no agreement between the parties to claim any specified interest, the plaintiff is entitled to include the interest amount in a summary suit in terms of Section 80 of the Negotiable Instrument Act read with Order XXXVII of CPC.** It will be relevant here to refer to the judgment of this court in the case of *S.K Malhotra vs. Man Mohan Modi* 166(2010)DLT723 wherein the court while granting the interest in a summary suit held as under:*

*“4. In the case of *Secretary, Irrigation Department, Government of Orissa and Ors. v. G.C. Roy* reported as : AIR 1992 SC 732, the Supreme Court held that a person is entitled to the payment of interest on the principal amount and the security deposit illegally retained, on the ground that the person deprived of the use of money to which he is legitimately entitled, has a right to be compensated for the deprivation, call it by any name. Even in the present case, it cannot be disputed that the appellant was deprived of the use of the money to*



which he was legitimately entitled and thus he had a right to be compensated for the period of deprivation at least from the date of institution of the suit till the date of passing of the decree.””

[emphasis supplied]

d) In **EMG Hospitality** (supra), relying on the judgment in **Sushila Mehta** (supra), it was held that the plaintiff can claim interest prior to the filing of the suit under the provisions of Order XXXVII of the CPC.

20. A perusal of Sections 79 and 80 of the NI Act makes it clear that every negotiable instrument is subject to payment of interest. Since the present suit is based on negotiable instruments, *i.e.*, cheques issued by the defendant, the present case would be covered under the provisions of Section 80 of the NI Act read with sub-rule (2)(b)(ii) of Rule 1 of Order XXXVII of the CPC. Hence, I am unable to agree with the submissions of the defendant that the aforesaid suit under Order XXXVII of the CPC would not be maintainable since the agreement between the parties did not provide for payment of interest.

21. In any event, the objection with respect of maintainability of the aforesaid suit was not raised by the defendant in his application under Order XXXVII Rule 4 of the CPC.

22. The defendant has placed reliance on the judgment of a coordinate bench of this Court in **GE Capital** (supra) wherein it was held that the said suit is not maintainable under Order XXXVII of the CPC as the amount claimed by the plaintiff therein was not the same as the liquidated amount which arose directly from the written instrument subject matter of the said suit and was only based on disputed statements of accounts. On the other hand, in the present case, the defendant has admitted the issuance of two cheques amounting to Rs. 20,88,055/- as well as his signatures on the undertaking.



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Hence, the aforesaid judgment is not applicable in the facts of the present case.

23. As regards the aspect of non-payment of cost, even though the Trial Court has noted that the defendant has not paid the cost imposed on the defendant, this factor has not weighed in the impugned order, which was passed on merits.

24. In view of the discussion above, I do not find any infirmity in the impugned order passed by the Trial Court that requires interference with this Court.

25. Accordingly, the present appeal is dismissed.

26. The Registry shall release the amount deposited by the defendant before this Court in favour of the plaintiff.

AMIT BANSAL, J

FEBRUARY 12, 2026

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