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

+ **CM(M) 2367/2025 & CM APPL. 76852/2025**

RAJENDER PRASAD

.....Petitioner

Through: Mr. Prag Chawla and Ms. Mehak
Tomar, Advocates.

versus

RAKESH KUMAR

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

ORDER

% **08.01.2026**

1. This hearing has been conducted through hybrid mode.

CM APPL. 76853/2025 (for exemption)

2. Allowed, subject to all just exceptions.

3. Accordingly, the application is disposed of.

CM(M) 2367/2025

4. The present petition has been filed by the petitioner under Article 227 of the Constitution of India assailing the order dated 25th October, 2025 passed by the Id. Trial Court in CS DJ ADJ No. 703/2023, whereby conditional leave to defend the suit filed under Order XXXVII Rule 3(5) of Code of Civil Procedure, 1908 (CPC) has been granted and it is prayed that unconditional leave to defend be granted to the petitioner.

5. Ld. Counsel for the petitioner has argued that the petitioner and the respondent entered into an agreement, whereby the petitioner was supposed to pay 2% interest annually on the delayed payment. Subsequently, there was a clause, whereby the interest was calculated at the interest rate of 2% per



month. It is also argued that if the clause is inconsistent with the main clause, that clause cannot be looked into and if that clause cannot be looked into then the petitioner is not liable to pay any amount to the respondent.

6. Ld. Counsel for the petitioner has also relied upon the judgment of Hon'ble Supreme Court passed in **"Bharat Sher Singh Kalsia vs. State of Bihar & Anr."** (2024 4 SCC 318), and has mentioned the following observation of the Court which is reproduced as under:

*"32. We are of the considered opinion that all three clauses are capable of being construed in such a manner that they operate in their own fields and are not rendered nugatory. That apart, we are mindful that even if we had perceived a conflict between Clauses 3 and 11, on the one hand, and Clause 15 on the other, we would have to conclude that Clauses 3 and 11 would prevail over Clause 15 as when the same cannot be reconciled, the earlier clause(s) would prevail over the later clause(s), when construing a Deed or a Contract. Reference for such proposition is traceable to **Forbes v Git**, [1922] 1 AC 256⁴, as approvingly taken note of by a 3-Judge Bench of this Court in **Radha Sundar Dutta v Mohd. Jahadur Rahim**, AIR 1959 SC 24. However, we have been able, as noted above, to reconcile the three clauses in the current scenario."*

7. The operative portion of the impugned order dated 25th October, 2025 reads as under:

"28. Accordingly, the application is disposed of with the following directions:

1. The Defendant is granted conditional leave to defend the suit, subject to him depositing the principal amount claimed in the suit, i.e., 21,79,880/- (Rupees Twenty-One Lakh, Seventy-Nine Thousand, Eight Hundred and Eighty Only) with this Court in the name of 'District Judge-04, South West District, Dwarka', within six weeks from the date of this order.



2. The said amount, upon deposit, shall be kept in an interest-bearing Fixed Deposit Receipt (FDR) with a nationalized bank, initially for a period of one year, to be renewed thereafter, pending the final disposal of the suit.”

8. Perusal of the impugned order shows that the deposit as ordered does not in any way prejudice the defence of the petitioner as it has been passed to safeguard the interest of both the parties. The arguments as submitted by the learned counsel for the petitioner touches the merits of the case and has to be decided after the evidence has been led in this case. Also, the judgement as relied upon by the petitioner touches the merits of the case. Accordingly, this Court does not find any illegality in the impugned order as it is a well-reasoned order and does not require any interference of this Court under Article 227 of the Constitution of India.

9. The present petition is dismissed as being devoid of any merits. Pending application(s), if any, also stand disposed of.

RAJNEESH KUMAR GUPTA, J

JANUARY 8, 2026/MR/isk