

IN THE COURT OF GAURAV: DISTRICT JUDGE-01
SHAHDARA DISTRICT, KARKARDOOMA COURTS:
DELHI

CS No. 336/2021

CNR : DLSH010053732021

In the matter of:-

Sh. Ashok Kumar Khurana

....Plaintiff

Versus

Sh. Sanjeev Bhasin

....Defendant

11.08.2026

ORDER

1. By way of this order, I shall decide the application filed by the defendant under Order XXXVII Rule 3(5) of the Code of Civil Procedure, 1908 [**hereinafter referred to as “CPC”**], seeking leave to defend the summary suit instituted by the plaintiff for recovery of a sum of Rs. 5,00,000/- along with interest and costs.

2. The plaintiff's case, in brief, that in June 2019, the defendant, who is the sole proprietor of M/s Jay Kay Brothers, sought a friendly loan of Rs. 5,00,000/- in cash. It is the further case of the plaintiff that considering their cordial relations, he advanced the said amount on 04.06.2019, and in discharge of liability the defendant executed a promissory note in his favour. Despite

repeated demands and service of a legal notice dated 07.06.2021, the defendant allegedly failed to repay the loan, compelling the plaintiff to institute the present suit under the summary procedure prescribed in Order XXXVII CPC.

3. Summons for appearance under Order XXXVII of the Civil Procedure Code, 1908, was duly served upon defendant and upon which, defendant also put his appearance within statutory period. Thereafter, summons for judgment in prescribed format, was also issued to the defendant, which was also duly served upon him on 02.11.2021. Consequently, defendant filed the application along with supporting affidavit, seeking leave to defend as per the mandate of Order XXXVII CPC on 17.11.2021, i.e. after the stipulated period of 10 days along with application seeking condonation of delay in filing leave to defend application. The said application seeking condonation of delay in filing leave to defend application has already been allowed by the learned Predecessor of this Court vide order dated 11.11.2022.

4. Learned counsel for the defendant contended that the suit is not maintainable under Order XXXVII CPC, that the promissory note relied upon by the plaintiff is forged and fabricated, and that it is neither signed by the defendant nor accompanied by a receipt or witnesses. He further contended that the plaintiff has no locus standi to file the suit, being a proprietorship concern, and that the suit has been filed in a court lacking territorial jurisdiction. He further contended that the plaintiff is in the habit of filing false

recovery cases. On this premise, he prayed for unconditional leave to defend.

5. *Per contra*, learned counsel for the plaintiff vehemently opposed the present application and contended that the promissory note was duly executed by the defendant and that the loan was advanced at his residence in Surajmal Vihar, Delhi, thereby conferring jurisdiction upon this Court. He further contended that the defendant's pleas are frivolous and concocted, raising no triable issue. He further contended that the defendant has no substantial defence and that the application for leave to defend deserves outright dismissal.

6. It is significant to note that the defendant had earlier filed an application under Order VII Rule 10 CPC seeking return of the plaint for want of jurisdiction. That application was dismissed as not maintainable by the learned Predecessor of this Court on 26.04.2024. Consequently, the plea of jurisdiction raised again in the present application stands foreclosed and cannot be reagitated.

7. I have given my thoughtful consideration to the contentions made by learned counsel for both parties and carefully examined the material available on record.

8. The object of Order XXXVII CPC is to provide a summary procedure for suits based on written contracts or other specified instruments where the plaintiff seeks to recover a debt or liquidated amount. The very purpose is to avoid protracted trials in cases where the defendant has no substantial defense. However, at the same time, the provision is not meant to shut out genuine defenses.

It is settled that Courts must allow leave to defend where there is a plausible or bona fide defense, though the same may be conditional in appropriate cases.

9. The principles governing grant of leave to defend have been summarized by the Hon'ble Supreme Court of India in judgment titled as *"IDBI Trusteeship vs. Hubtown Ltd."* (paragraph 17), (2017) 1 SCC 568" in the following terms:-

"17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., MANU/SC/0043/1976 : (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., MANU/SC/0376/1965 : AIR 1965 SC 1698: (1966) 68 Bom LR 36], as follows:

17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.

17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.

17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.

17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court”

10. In the present case, the defendant has categorically denied execution of the promissory note and disputed the very existence of the loan transaction. Allegations of forgery and fabrication are serious in nature and cannot be brushed aside at the threshold. The plaintiff relies upon the promissory note and legal notice, but the genuineness of the document, the existence of the loan, and the defendant’s liability are all matters which require adjudication on evidence. The plea of jurisdiction has already been decided against the defendant, but the remaining grounds such as denial of loan and allegation of forgery do disclose triable issues. These issues go to the root of the plaintiff’s claim and cannot be termed sham or moonshine.

11. In view of the foregoing discussion, this Court is of the considered opinion that the defendant has raised bona fide triable

issues which necessitate adjudication. **Accordingly, the application under Order XXXVII Rule 3(5) CPC is hereby allowed. The defendant is granted unconditional leave to defend the suit.**

12. Defendant is directed to file the written statement within stipulated period with an advance copy to the opposite party. Upon receipt of written statement, plaintiff is at liberty to file the replication, if any, within four weeks with an advance copy to the opposite party.

13. It is clarified that nothing stated herein shall amount to an expression of opinion on the merits of the case, which shall be decided after trial.

(Typed to the dictation directly, corrected and pronounced in open court on 11.08.2026).

**(GAURAV)
DISTRICT JUDGE-01
SHAHDARA DISTRICT
KARKARDOOMA COURTS
DELHI**