In the Court of Sh. Ashwani Kumar Sarpal, Principal District & Sessions Judge, East District, Karkardooma Courts, Delhi.

Sh. Jitender Yadav

vs.

Mohd. Inam

[CS No. 335/2024]

(ORDER ON LEAVE TO DEFEND APPLICATION)

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1. In this suit for recovery of Rs. 4,00,000/-, defendant filed an application for leave to defend under Order 37 Rule 3 (5) CPC on 25.03.2025. He was served with summons for judgment on 11.03.2025 as per record and there is a delay of 04 days in filing this application but ignoring this fact of limitation, I am still deciding the same on merits. I have heard counsels for both the parties and gone through the record.

2. According to the averments of the plaintiff, he was having good friendly relations with the defendant for the last 4-5 years and at his request, he gave friendly loan of Rs. 4 lakhs in cash on 05.05.2023 after arranging the same to the defendant who assured to return the same in first week of August, 2023. Defendant also executed a pronote on the same day in this

regard. When plaintiff asked for return of the loan amount , then defendant gave one cheque bearing No. 429306 dated 04.08.2023 of Rs. 4 Lakhs drawn on Indian Bank, Laxmi Nagar branch. This cheque on presentation was dishonoured on the ground of 'insufficient funds" on 08.08.2023. Thereafter, a legal notice dated 16.08.2023 was issued by the plaintiff to the defendant which was received and he gave reply on 04.09.2023. Plaintiff, thereafter, filed the present suit.

3. Defendant in his leave to defend application besides taking certain legal objections in para no. 5 stated that entire liability of the plaintiff has already removed by him. In para no. 8, he also mentioned that no single penny is due against the defendants. In para no. 9 of the application, defendant admitted that he received Rs. 4 Lakhs from the plaintiff but he returned the excess amount to him, which fact is concealed by the plaintiff. In this regard, defendant relied upon bank statement for the period from 23.10.2022 to 28.03.2023 to show different transactions of money received from the plaintiff and sent to him and accordingly, requested for grant of unconditional leave to defend.

4. After considering the averments made in the leave to defend application and the record, the following important facts have emerged ;

(a) That defendant had borrowed Rs. 4 Lakhs from the plaintiff as admitted in para no. 9 of the application. According to the plaintiff, this Rs. 4 Lakhs were paid in cash on 05.05.2023 which fact is nowhere disputed in the application for leave to defend by the defendant.

(b) No doubt, plaintiff has not placed on record the pronote executed by the defendant on 05.05.2023 at the time of receiving the loan amount but he nowhere in his leave to defend application denied the issuing of the cheque of Rs. 4 Lakhs.

(c) There is no dispute of the fact that the dishoured cheque in question of Rs. 4 Lakhs is bearing the signature of the defendant and issued from his bank account. It is not the case of the defendant as per his application that the particulars of the cheque were not filled up by him nor any defence is taken that this cheque was misused or was blank signed cheque or was given as security at any time.

(d) The receipt of legal notice of demand dated 16.08.2023 issued by the plaintiff is also not disputed. There is also no dispute that a reply of this notice dated 04.09.2023 was given by the defendant. However, in whole of the leave to defend application, defendant nowhere relied upon any of defence plea as raised in the reply to the legal notice. In the reply dated 04.09.2023, defendant has taken a ground that he had taken loan of Rs. 2 Lakhs in August, 2022 and given a blank signed cheque as a security and the said amount of Rs. 2 Lakhs was returned on different dates in between November, 2022 to April, 2023 and when he asked for return of the cheque, then it was not returned on the ground being misplaced. In the reply, he also denied taking of any loan of Rs. 4 Lakhs in May, 2023 nor gave any assurance to return the same in August, 2023 and even described the execution of the pronote as forged and fabricated document. None of these grounds were taken in the leave to defend application wherein it was admitted that loan of Rs. 4 Lakhs was taken which he has returned. The averments made in the leave to defend application are contradictory to the defence taken in the reply to the legal notice.

(e) In leave to defend application, virtually the defendant had admitted taking of loan of Rs. 4 Lakhs from the plaintiff on 05.05.2023 but alleged that he had returned this amount even in excess. The defendant submitted a payment details dated 29.04.2026 in this court in which, he mentioned that out of Rs. 4 Lakhs, he returned Rs. 2,80,750/- through Online/bank transfer and remaining Rs. 1,19,250/- in cash in 3 or 4 installments. However, all these Online/bank transfer payments are of period prior to 05.05.2023. No detail is given on which dates and what amount, he made payment of Rs. 1,19,250/- in cash. The defendant appears to be confusing the court regarding making of excess payment by referring to certain transactions which appears to be some earlier transactions and not relating to the loan transaction of Rs. 4 Lakhs.

(f) The ground taken of absence of territorial jurisdiction of the court is baseless because both the parties are living within the jurisdiction of this court and, thus, this court has power to deal with the present matter.

(g) When the issuing of the cheque is not in dispute which is not described as security cheque nor any allegation of misuse is levelled, then the suit itself is maintainable under Order 37 CPC on the basis of this cheque and non production of the pronote is not a ground to grant any leave to defendant.

5. The basic and important judgment of Hon'ble Supreme Court on leave to defend application is given in case **M/s Mechlaec Engineers & Manufactures vs. M/s Basic Equipment Corporation, AIR 1977 SC 577** in which law relating to leave to defend under Rule 3 (5) of Order 37 was summed up as under;

(a) If the defendant satisfies the court that he has a good defence to the claim on its merits, the plaintiff is not entitled to leave to sign the judgment and the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that, he had a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to time or mode of trial but not as to payment into court or furnishing security.

(d) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by allowing the defence to proceed if the amount claimed is paid into the court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to try to prove a defence.

6. Hon'ble Supreme Court lateron in **IDBI Trusteeship Services Ltd. vs. Hubtown Ltd., Civil Appeal no. 10860 of 2016 decided on 15-11-20216** held that this judgment in M/s Mechlaec Engineers & Manufactures case was given prior to the amendment of 1976 in the provision and thus above law laid down was partly modified to some extent and it is held as under;

(i) If the defendant satisfies the Court that he ahs a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment and defendant is entitled to unconditional leave to defend the suit.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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 the judgment forthwith.

(vi) 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 substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.

7. After considering the above facts and circumstances, I am of the opinion that it is not a fit case where any leave to defend is to be granted to the defendant as he admitted the receipt of loan amount of Rs. 4 Lakhs from the plaintiff but could not establish that he had returned the same. The defence plea taken in the reply to the legal notice is not matching with the averments made in the leave to defend application. The reliance placed by the defendant upon some bank transactions are apparently of the period prior to the taking of the loan and apparently, are relating to some previous transactions and not relating to the transaction of loan of Rs. 4 Lakhs in question. The issuing of the cheque is not in dispute in any manner. Hence, it can be said that there is no plausible or even reasonable ground available to the defendant for grant of any leave as no triable issue has arisen. Accordingly, the leave to defend application is rejected. The suit is decreed. Defendant is directed to pay Rs. 4 lakhs to the plaintiff alongwith interest @ 6% per annum from the date of filing of the suit till realisation. The claim of the plaintiff for grant of interest @ 24% per annum is rejected as firstly, it was a friendly loan transaction and secondly, plaintiff is not claiming any interest prior to institution of the suit. However, plaintiff will be entitled to the full costs. Decree be prepared and file be consigned to record room.

ASHWANI SARPAL
Digitally signed by ASHWANI SARPAL
Date: 2026.05.19 13:25:29 +0530

Dt- 19.05.2026. **(Ashwani Kumar Sarpal)**

Principal District & Sessions Judge

East District, Karkardooma Courts.