

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

Ms. Manisha Chhabra

vs.

Ms. Nisha
[CS No. 177/2025]

(ORDER ON LEAVE TO DEFEND APPLICATION)

1. In this suit for recovery of Rs. 5,00,000/-, defendant filed an application for leave to defend under Order 37 Rule 3 (5) CPC on 07.07.2025. She was served with summons for judgment on 18.06.2025 as per record but since, the summer vacations were going on and regular courts were closed till the end of June, 2025 so this application is treated as within time. I have heard counsels for both the parties and gone through the record.

2. According to the averments of the plaintiff, she was having good family relations with the defendant since long time and at her request, she gave friendly loan of Rs. 5 lakhs to her on 29.01.2019 by transferring it in her bank account. When plaintiff asked for return of the same, then defendant gave one cheque bearing No. 823563 dated 03.10.2023 for Rs. 5 Lakhs drawn on

Vijaya Bank, Mayur Vihar, Delhi branch. This cheque on presentation was dishonoured on the ground of 'suspended/block bank'. Thereafter, a legal notice dated 03.11.2023 was issued by the plaintiff to the defendant but she did not give any reply. Plaintiff also initiated proceeding under Section 138 of NI Act against the defendant in respect of the dishonour of the cheque in question which is still pending. (It is informed during arguments by the parties that in that proceeding, a notice under Section 251 Cr.P.C. has been framed against the defendant and the said complaint case has gone for trial). Plaintiff also filed the present suit for recovery of the cheque amount of Rs. 5 Lakhs alongwith interest.

3. Defendant in her leave to defend application admitted that she had received Rs. 5 lakhs towards financial assistance/ loan in the year 2019 but stated that she had taken it from one Mr. Sanjeev Kumra who transferred the said amount in her bank account from a 3rd party account. It is also stated that defendant had handed over one blank signed cheque to Mr. Sanjeev Kumra towards security of the loan which has been misused. She further stated that she had already returned the loan amount to Mr. Sanjeev Kumra in installments within a period of one year. She denied having any liability towards the plaintiff and also stated that she was having no prior acquaintance with her as alleged by the plaintiff in her plaint. She further stated that plaintiff contacted her telephonically first time in October, 2023 for seeking details regarding facial and beauty services upon recommendation of a friend as she is running a Beauty Parlour. Accordingly, the defendant shared her address of the parlour and

its location to the plaintiff through whatsapp and the plaintiff visited her parlour on 30.10.2023 and availed her services. It is further alleged that plaintiff was given her residential address and its location as she wanted to get ready for some wedding function in the early morning but plaintiff visited her residential society on 01.11.2023, made inquiries from the security guard and then left without visiting the residence of the defendant. Plaintiff in connivance with Mr. Sanjeev Kumra filed a suit as well as a complaint under Section 138 of NI Act as Mr. Sanjeev Kumra had sexually abused her. (Admittedly a rape case has been registered by the defendant against Mr. Sanjeev Kumra in PS: Pandav Nagar after receipt of the summons in the case under Section 138 of NI Act). Defendant also stated that the legal notice dated 03.11.2023 is defective and illegal as in the same, the particulars of some another cheque are given and not of the present cheque in question. Thus, defendant by alleging that her blank signed cheque given as security to Mr. Sanjeev Kumra has been misused, so she is entitled to 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. 5 Lakhs which came in her bank account in year 2019 but she alleged that Mr. Sanjeev Kumra had transferred this amount in her account from a 3rd party account i.e. of the plaintiff on 29.01.2019.

- (b) That there was no written agreement or any document to show the loan transaction.
- (c) There is no dispute of the fact that the dishoured cheque in question is bearing the signature of the defendant and issued from her bank account. Even if, the particulars of the cheque are not in the handwriting of the defendant but she is debarred to take this plea as Section 20 of NI Act draws a presumption that drawer of the cheque has given a deemed authority to fill up the blank signed cheque.
- (d) The receipt of legal notice of demand dated 03.11.2023 issued by the plaintiff is admittedly received by the defendant though the same is described as defective and illegal.
- (e) The pendency of complaint case under Section 138 NI Act is also not in dispute against the defendant which is at trial stage.
- (f) Defendant admittedly had not given any reply of the legal notice sent by the plaintiff nor lodged any police complaint or taken any action regarding the alleged misuse of her blank signed cheque by the plaintiff in connivance with Sh. Sanjeev Kumra.
- (g) Defendant has not given any details on which dates and what amount of installments was made by her to Sh. Sanjeev Kumra in respect of return of the loan amount of Rs. 5 Lakhs in the year 2019 or 2020 as alleged in the leave to defend application.

(h) There is a controversy whether plaintiff and defendant were known to each other since long i.e. prior to the date of transfer of Rs. 5 Lakhs in the account of the defendant in year 2019 or first time when they met on 30.10.2023. Defendant has not given the name of a friend through whom she met with the plaintiff. Some whatsapp chats filed by the defendant simply point out certain communications regarding obtaining information about the address of shop and residence of the defendant by the plaintiff and these whatsapp nowhere point out anything pertaining to the loan transaction.

5. The only major disputed controversy left to be decided is whether the defendant has taken loan from Mr. Sanjeev Kumra or from the plaintiff and whether the security cheque as given allegedly by the defendant to Mr. Sanjeev Kumra has been misused by the plaintiff and whether defendant is having no liability left as she returned the loan amount taken from Mr. Sanjeev Kumra.

6. 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.

7. 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.

8. The dispute between the parties whether the cheque in question was issued against liability or was a security cheque which has been misused cannot be decided without proper evidence. Similarly, whether any loan transaction existed between the plaintiff and defendant actually or not is also a matter to be dealt with after evidence. Defendant has also to show that infact she had taken the loan from Mr. Sanjeev Kumra which she has already returned. In such circumstances, I am of the opinion that defendant is required to be given an opportunity to defend the case but not unconditionally.

9. Hon'ble Supreme Court in **Sudin Dilip Talaulikar vs. Polyfab Wires Pvt. Ltd., Civil Appeal no. 5528/2019 decided on 15-7-2019** held that in a summary suit, if the defendant discloses such facts of a prima facie fair and reasonable defence, the court may grant unconditional leave to defend. This naturally concerns the subjective satisfaction of the court on the basis of materials that may be placed before it. However, in an appropriate case, if the court is satisfied of a plausible or probable defence and which defence is not considered a sham or moonshine, but yet leaving certain doubts in the mind of the court, it may grant conditional leave to defend. In contradistinction to the earlier subjective satisfaction of the court, in the latter case there is an element of discretion vested in the court. Such discretion is not absolute but has to be judiciously

exercised tempered with that what is just and proper in the facts of a particular case.

10. After considering the averments of the defendant and facts and circumstances of the case, the present leave to defend application is allowed and defendant is given a chance to contest the case but defendant has to deposit sum of Rs. 5,00,000/- in the court in the shape of the FDR in the name of the court of Principal District & Sessions Judge, East District, KKD. This amount of Rs. 5,00,000/- shall not be given to the plaintiff but will remain deposited with the court and will be dealt with at the final stage of the suit.

11. The present suit is now treated as an ordinary civil suit for recovery. Defendant is directed to deposit the above mentioned amount of Rs. 5,00,000/- and also to file written statement on next date of hearing. Advance copy of the replication be provided to the counsel for defendant by the plaintiff and both the sides shall also file affidavits of admission/denial of documents. Application of leave to defend is, thus, disposed off conditionally.

Dt- 15.05.2026.

(Ashwani Kumar Sarpal)
Principal District & Sessions Judge
East District, Karkardooma Courts.