

**In The Court of Sh. Hem Singh,**  
**District Judge-01, (East),**  
**Karkardooma Courts, Delhi.**

CS No.567/2016

CNR NO. DLET01-001837-2015

In the matter of :-

**M/s Mayank Arc & Electrodes Pvt. Ltd.**

Through its Director

Sh. Dalip Roy

At H-557, Hira Complex, School Block,

Shakarpur, Delhi-110092

..... Plaintiff

**Versus**

1. **Smt. Kiran Nain**  
W/o Lt. Kanwal Nain

**Lt. Kanwal Nain**  
**Through LRs**

2. **Smt. Kiran Nain, W/o Lt. Kanwal Nain**
3. **Baibhav, S/o Lt. Kanwal Nain**
4. **Aayush, S/o Lt. Kanwal Nain**

All R/o House no.157-A, Mayur Vihar,  
Phase-II, Delhi-110091

.....Defendants

**03.02.2026**

**ORDER**

1) By way of this order I shall dispose of the leave to defend application filed by the defendants.

2) Present suit has been filed by plaintiff under Order XXXVII CPC for recovery of Rs.11,50,000/- along with interest against the defendants.

3) Brief facts of the case necessary for disposal of the instant application are as under:-

a) Plaintiff is a private limited company and one of the directors of plaintiff company, namely, Sh. Dalip Rai and his wife Mrs. Madhvi Rai are neighbors of the defendants and was having good relations with the defendants. Defendants had been borrowing from and repaying back the money to the plaintiff time to time for their business purposes. Defendants had borrowed amount of Rs.2,00,000/- on 14.09.2011, Rs.5,00,000/- on 22.10.2011 and Rs.4,50,000/- on 26.11.2011 from the plaintiff. defendants no.1 issued a post dated cheque no. 688285 dated 24.09.2012 amounting Rs. 11,50,000/- (hereinafter cheque in question) towards the repayment of said amount. However, the said cheque dishonoured on its presentation and plaintiff duly informed about the dishonour of cheque to the defendants, however the defendants refused to return the borrowed amount. On account of aforesaid facts plaintiff sent a legal notice under Section 138 of the Negotiable Instruments Act and also initiated complaint case under the said provision.

b) On receiving of summons for judgment, the defendants filed the present application seeking leave to defend.

4) The defendants in their application for leave to defend stated that they are entitled for unconditional leave to defend and the present suit is not maintainable as there is no cause of action ever arose in favour of plaintiff. It is the case of the defendants that in year 2007 they had taken a sum of Rs.2,00,000/- as loan from the plaintiff and same was duly repaid to the plaintiff. At the time of taking the said loan, plaintiff taken an undated blank cheque from defendants no. 1. defendants have already made the repayment of said loan via online transfer, however, despite request the plaintiff has not returned the said undated blank cheque to the defendants. It is further stated that defendants had never taken a sum of Rs.11,50,000/- from the plaintiff as loan.

5) Arguments heard. File perused. Considered.

6) As per the case of the plaintiff, it had given a loan of Rs.11,50,000/- to the defendants in cash, however, the source of said cash is nowhere mentioned in the entire plaint. During the pendency of proceedings, the plaintiff has placed on record photocopy of its bank statement showing that amount of Rs.11,50,000/- was withdrawn by the plaintiff from its account, however, said fact is nowhere disclosed in the plaint. As per the case of the plaintiff, defendants had been taking and returning loan from the plaintiff time to time, however the mode of payment of said previous loans as well as relevant period is not pleaded in the plaint. In leave to defend application, defendants specifically pleaded that earlier loan was taken as well as

returned through banking channels. In reply to leave to defend application plaintiff has not stated anything in respect of receiving of Rs.2,00,000/- in his bank account from the defendants account. defendants have also placed on record copy of judgment dated 22.08.2022 passed by Ld. Metropolitan Magistrate, NI Act, East District, Delhi in the Complaint case filed by the plaintiff, wherein Ld. MM while dismissing the complaint observed that the plaintiff being a private limited company can not advance loan without passing special resolution. No such board resolution is placed on record by the plaintiff. The plaint is also silent on the aspect that when earlier loan of Rs.2,00,000/- was given and received back by way of bank transfer than under what circumstances the plaintiff compelled to give loan of Rs.11,50,000/- via cash when admittedly the money was lying in its bank account.

7) The Hon'ble Supreme Court of India in judgment titled as ***"B L Kashyap and Sons Ltd V/s M/s J. M. S. Steels and Power Corporation"*** and another in Civil Appeal no. 379/2022 [Arising out of SLP (C) no. 19413 of 2018], date of decision 18.01.2022 held that grant of leave to defend (with or without the conditions) is the ordinary rule and denial of leave to defend is an exception para 17 of the said judgment is reproduced as below:

*"17. It is at once clear that even though in the case of IDBI Trusteeship, this Court has observed that the principles stated in paragraph 8 of Mechelec Engineers' case shall stand superseded in the wake of amendment of Rule 3*

*of Order XXXVII but, on the core theme, the principles remain the same that grant of leave to defend (with or without conditions) is the ordinary rule; and denial of leave to defend is an exception. Putting it in other words, generally, the prayer for leave to defend is to be denied in such cases where the defendants has practically no defence and is unable to give out even a semblance of triable issues before the Court”.*

8) In view of the facts and circumstances of the present case that the entire loan amount of Rs.11,50,000/- was given by the plaintiff to the defendants in cash and in view of the settled law by the Hon’ble Supreme Court in the aforesaid judgment, the application of leave to defend is allowed and leave to defend is granted to defendants. Nothing in the present order shall tantamount to expression of opinion of this Court on the merit of this case.

9) defendants are directed to file written statement within 30 days from today with advance copy of the same to the plaintiff. Thereafter, replication, if any be filed within four weeks with advance copy of the same to the defendants. Parties are also directed to file affidavits of admission-denial of documents on or before the next date of hearing with advance copy to each other.

**Announced in the open  
Court on 03.02.2026**

**(Hem Singh)  
District Judge-01  
(East)/KKD/Delhi**