

IN THE COURT OF SH. SOMITRA KUMAR,
DISTRICT JUDGE – 06, (EAST DISTRICT) KARKAR-
DOOMA COURTS, DELHI

CS NO. :-252/2022

IN THE MATTER OF :-

Jai Mahadev Auto Deals
Through Its Proprietor
Sh. Pradeep Kumar Garg,
S/o Late Sh. H. M. Garg
R/o 8-A/385, DDA Janta Flats,
Trilok Puri, Delhi-110091

....Plaintiff

versus

Sh. Dhiraj Kumar Singh
S/o Sh. Ramavadh Kumar
R/o 350, Kotla Village, Mayur
Vihar Phase-I, Delhi-110091

....Defendant

ORDER ON APPLICATION FOR SEEKING LEAVE TO DE-
FEND UNDER ORDER XXXVII RULE 3(5) OF THE CODE
OF CIVIL PROCEDURE, 1908

10.02.2025

1. Vide this order, an application under Order XXXVII Rule 3(5) of the Code of Civil Procedure, 1908 (hereinafter referred as to 'CPC') filed on behalf of the defendant seeking leave to defend the present suit shall be decided.

2. The present suit has been filed by the plaintiff against the defendant under Order XXXVII of CPC for recovery of Rs. 3,24,350/- (Rupees Three Lakhs Twenty Four Thousand Three Hundred Fifty only) along with interest. Brief facts of the present case as averred in the plaint are that the defendant had taken two TSRs on rent from the plaintiff; that TSR bearing no. DL-1RS-9312 was taken on rent by the defendant on a monthly rent of Rs. 12,450/- for the period from 02-09-2019 to 01-01-2021; that total rent for the 16 months was Rs. 1,99,200/- and the defendant has paid a sum of Rs. 32,350/-; that another TSR bearing no. DL-1RM-8199 was taken by the defendant on rent on monthly rent of Rs. 10,500/- for a period from 10-10-2019 to 09-01-2021; that the total rent due upon the defendant of the said TSR is Rs. 1,57,500/- and that the total rent of both TSRs due upon the defendant is Rs. 3,24,350/-.

3. It is further averred in the plaint that to discharge his liability, the defendant had issued a post dated cheque bearing no. 055176 amounting Rs. 3,24,350/- (Rupees Three Lac Twenty Four Thousand Three Hundred Fifty only) dated 23-12-2020 drawn on Oriental Bank of Commerce, Mayur Vihar Phase-II, DELHI with assurance to the plaintiff that the said cheque would be encashed at the time of its presentation; that on presentation, the said cheque received back with endorsement "funds insufficient" vide return memo dated 24.12.2020; that a legal demand notice dated 05.01.2021 was sent by the plaintiff to the defendant which was duly served upon the defendant, however, the defendant neither replied to the same nor made the payment to the plaintiff.

4. It is finally prayed that the defendant is liable to pay a sum of Rs. 3,24,350/- to the plaintiff along with interest @ 12 % per annum. Hence, the present suit for recovery under Order XXXVII CPC was filed.

5. Summons for the appearance of the defendant under Order XXXVII CPC were issued to the defendant and the defendant entered an appearance on 08.11.2023 within the prescribed time. The summons for judgment in the prescribed format were issued to the defendant and the defendant filed the instant application for seeking leave to defend and contest the suit under Order XXXVII Rule 3(5) of CPC along with an affidavit in support of the said application.

6. It is averred in the instant application for seeking leave to defend the present suit that the suit filed under the provision of Order XXXVII of C.P.C. is not maintainable before this Hon'ble Court as this court has no jurisdiction to decide the suit as the alleged transaction is commercial in nature and the Commercial Court established under the provisions of the Commercial Court Act 2015 as amended on 2018 has the jurisdiction to try and adjudicate the present suit; that said suit of the plaintiff is based on the alleged Hire Purchase agreement, a copy of which has not been filed by the plaintiff with the plaint; that the alleged transaction of releasing of 2 TSRs, both having commercial registration numbers to the defendant by the plaintiff on monthly repayment of finance amount by the defendant to the plaintiff is commercial in nature; that the plaintiff indulges in the business of commercial activities of financing TSRs/Auto on installment basis to the customers to run commercial TSR/Auto having commercial registration numbers on road for commercial

purpose, therefore the suit of the plaintiff is barred by law as this Court does not have jurisdiction to entertain and try the present suit.

7. It is further averred in the application that the true fact is that the defendant had purchased two TSRs from the plaintiff on installments one having Registration No. DL-IRS-9312 with a cost of Rs. 5,70,000/- and the defendant had paid the amount of Rs. 1,20,000/- in cash immediately to the plaintiff and the balance amount of Rs. 4,50,000/- was to be paid in 36 installments @ Rs. 12,450/ each installment per month; that the defendant had also purchased another TSR having Registration No. DL-1RM-8199 with a cost of Rs. 4,70,000/- on 01-09-2019 and the defendant had paid Rs. 1,70,000 in cash and the balance amount of Rs. 3,60,000 was to be paid in 36 installments @ Rs.10,050/- each installment; that the plaintiff had got signed two hire purchase agreements from the defendant after taking the photographs, adhar card, pan card and some blank cheques from the defendant but the plaintiff did not give any copy of the said agreement and did not issue any receipt against both cash payment received from the defendant; that the defendant is entitled to leave to defend the suit to disprove the terms and condition of said transaction which has been deliberately breached by the plaintiff and due to the involvement of triable issues in this suit and it requires evidence from the parties and its needs an opportunity to be given to the defendant to defend the suit as per law.

8. It is further averred in the application that the alleged cheque no. 055176 dated 23.12.2020 for Rs. 3,24,350/- was not

issued toward any debt and liability and the same has been misused by the plaintiff which was taken as security at the time of said transaction and the details in the blank cheque have been filled in by the plaintiff in English which was never issued against any debt or liability as a rent by the defendant.

9. It is further averred that the plaintiff is engaged in the business of financing the Auto/TSR/vehicle on hire purchase agreement on an installment basis on heavy interest without having any valid license from the Reserve Bank of India or from any other Banking and Financing institution or Authority to run its proprietorship Firm for such financial transaction. The plaintiff has forcefully taken away both TSRs from the custody and possession of the defendant and till date neither any money has been refunded nor any TSR has been returned by the plaintiff to the defendant; that the defendant has already filed a complaint case under section 200 of Cr.P.C against the plaintiff which is pending before Ld. JMFC East at Karkardooma Court.

10. It is further averred in the application that the plaintiff failed to file any document to establish that the said cheque has been issued by the defendant to the plaintiff against any existing legal debt or liability as alleged; that the suit of the plaintiff is absolutely frivolous and vexatious and without many merit and deserves to be dismissed at the preliminary stage; that the defendant has raised the substantial defence in this matter which needs the evidence and the defense is not a sham or moonshine. The defendant is entitled to unconditional leave to defend the suit and to contest the suit on merit as per the law.

11. It is finally submitted the defendant is entitled leave to defend the suit having raised the triable issues. Therefore, it is prayed that the present application of the defendant may be allowed and leave to contest the present suit may be granted.

12. The plaintiff filed a reply to the application for leave to defend filed by the defendant reiterating the facts narrated in the plaint. The plaintiff vehemently opposed the grant of leave to defend to the defendant stating that the defendant has concealed the true and material facts; that the defendant has not placed on record any document to show that he has purchased the TSR from the plaintiff; that the defendant is not entitled to leave to defend the suit as no triable issue has been raised by the defendant and since no triable issues have been raised therefore, the question of deciding the matter on merits by leading evidence does not arise at all. The rest of the contents of the application for the grant of leave to defend is denied by the plaintiff and it is prayed that application may be dismissed with heavy cost.

13. Submissions were heard from the Ld. Counsels of both the parties and the record have been carefully perused.

14. The legal position on the grant of leave to defend has been spelled out in the numerous judgments. The law regarding the grant of leave to defend is now well settled. Particularly, in the judgment in ***IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd., (2017) 1 SCC 568***, can be referred herein, in which, parameters have been enumerated as under:

“.....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 leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.

17.2. If the defendant raises triable issues indicating the 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 the court.”

15. Adverting to the facts of the present suit, it is the case of the plaintiff that the defendant has taken two TSRs from him on a monthly rent of Rs. 12,450/- and Rs. 10,500/- respectively and cheque bearing No. 055176 dated 23.12.2020 of Rs. 3,24,350/- was issued in discharge of liability towards outstanding rent due for two TSRs. The said cheque returned dishonoured vide return memo with endorsement “fund insufficient”.

16. However, it is contended on behalf of the defendant that the plaintiff has not filed even a single document in support of its contention that the said cheque was issued in discharge of liability towards the outstanding rent for the TSRs. On the contrary, it is contended on behalf of the defendant that two TSRs were purchased by the defendant from the plaintiff through hire purchase agreements and had paid a certain amount in cash, and the balance amount was to be paid in 36 monthly installments of Rs. 12,450/- and Rs. 10,500/- respectively. It is also contended that the plaintiff is engaged in the business of financing TSR/Auto on installment by charging heavy interest.

17. In view of the above contention of the defendant that the plaintiff is engaged in the business of financing of TSR/Auto by charging interest and the defendant purchased the said TSR from the plaintiff and the same were financed by the plaintiff, the defendant has raised the triable issue of lack of subject matter jurisdiction of this Court being a commercial dispute as per Section 2(1)(c)(i) of the Commercial Courts Act, 2015 as well as the actual nature of the transaction between the parties. Further, the contention of the plaintiff that the TSRs were rented out to the defendant and the said cheque was issued in discharge of liability toward the outstanding rent are not supported by any document. Therefore, the Court is of the opinion that the defendant has raised a reasonable defence for which the defendant ought to be given an opportunity to contest the suit by leading evidence to prove his contentions.

18. To sum up, this Court is of the view that the present matter comes within the principles contained in para 17.2 of *IDBI*

Trusteeship (supra), and based on the material on record, this Court is of the view that the defendant is granted unconditional leave to defend the present suit.

19. The application for seeking leave to defend under Order XXXVII Rule 3(5) of CPC of the defendants is accordingly disposed of.

20. Written statement be filed within stipulated time with an advance copy thereof to the plaintiff. Upon supply of copy of written statement, plaintiff may file his replication with an advance copy thereof to the opposite side.

Nothing discussed herein above shall be construed to be an expression of opinion on the merits of the case.

**Announced in open Court
on this 10th day of February, 2025**

**(SOMITRA KUMAR)
District Judge-06, East District
Karkardooma Courts, Delhi**