

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

CS NO. :-194/2023

IN THE MATTER OF :-

Sh. Manvir Singh

...Plaintiff

versus

Ms. Kalpana Singh

....Defendant

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

25.04.2025

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. 10,00,000- (Rupees Ten Lakhs only) and *pendente-lite* and future interest. Brief facts of the present case as averred in the plaint are that the defendant and plaintiff entered into an lease deed dated 28.09.2018 and same was duly registered with Sub-Registrar-VIII Delhi as per lease deed defendant let out the flat bearing No.

C-22F, Delhi Police Apartment, Mayur Vihar phase-I Delhi-110091 and Rs. 10 Lacs were paid by plaintiff as security out of which Rs. 5 lacs was paid vide cheque no. 024075 dated 28.09.2018 drawn at Kangra Co-operative Bank Ltd., Mayur Vihar Ph-1, Delhi and Rs. 3,01,000/- was paid by vide cheque no. 024076 dated 28.09.2018 drawn at Kangra Co-operative Bank Ltd. Mayur Vihar Ph-1, Delhi and Rs. 1,99,000/- was paid through cash by plaintiff and it was also agreed between defendant and plaintiff that defendant would refund the security amount at the time of handing over the physical possession of the aforesaid leased property.

3. It is further averred in the plaint that on 07.04.2021 defendant alongwith her husband came at the residence of plaintiff and asked to receive the security amount and to handover the said flat and defendant issued a cheque on 07.04.2021 of amount Rs. 10 Lacs i.e. security amount in the name of plaintiff drawn at the South Indian Bank Ltd. branch Mayur Vihar, Delhi and the same was presented by plaintiff in his bank on 07.04.2021. However, the same was returned dishonoured with remarks "Funds Insufficient". After receiving the cheque plaintiff contacted defendant as well as her husband. Defendant made one excuse or other and kept on passing the time. The defendant also took the possession of the said flat. To sort out the matter at-least 10 meetings were held between defendant and plaintiff and finally a meeting was held on 20.02.2023 in which defendant and her husband refused to pay a single penny and asked plaintiff to do whatever he wants. Plaintiff was quite surprised to hear these words from the mouth of defendant as well as her husband as defendant firstly took the

possession of the flat on 07.04.2021 and issued a cheque which was dishonoured at the time of presentation.

4. It is further averred that finding no alternative, the plaintiff served legal notice dated 02.03.2023 to the defendant thereby demanding his above said money but the defendant did not reply the notice despite service of the notice. In view of this, it is prayed that the defendant is liable to pay a sum of Rs. 10,00,000/- to the plaintiff along with pendente-lite and future interest @ 18 % 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 11.05.2023. 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 to 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 in the present case the plaintiff is relying upon one cheque bearing no. 755370 of South Indian Bank, Mayur Vihar Branch and alleged one registered Lease Deed dated 28.09.2018. The story portrayed by plaintiff in his plaint / suit is completely beyond the notions of reasonableness and rationality; that plaintiff is an un-licenced money lender, who takes undue advantage of the innocent borrowers who approaches the plaintiff for lending money into their tough and urgent situations.

7. It is further averred in the application that during September 2018, defendant was in urgent need of money for

treatment of her father for his severe ailment, hence she approached the plaintiff for seeking loan of Rs. 5,00,000/- as the plaintiff was known to the defendant through some common friends of her husband. The plaintiff agreed to pay Rs. 5,00,000/- to the defendant on the condition that the defendant would have to give the possession of the said flat bearing No. C-22F, Delhi Police Apartment, Mayur Vihar phase-I Delhi-110091 to the plaintiff for the period of 9 months and one Registered Lease Deed was executed into which at the wish of the plaintiff certain sham terms were incorporated for the sake of securing his debts of Rs. 5,00,000/-. Hence the innocent defendant during her urgent need of the money, was coerced by the plaintiff to enter into such agreement i.e. Lease Deed with motive to capture her flat as well as to force her to return the such quantum of money which was never taken by her.

8. It is further averred in the application that the alleged Lease deed stated by Plaintiff to be executed by the defendant, was sham arrangement occurred completely upon the instructions and instance of the Plaintiff; that the Plaintiff, while getting the said lease deed prepared, assured and allured the defendant that any term or transaction written into the same are symbolical one and no prejudice would be caused to the defendant in any manner. Therefore, in the name of paying loan amount of Rs. 5,00,000/- to her, the defendant was compelled by the plaintiff to sign certain documents without going through the contents of the same and to appear before the Sub-registrar. Therefore the execution and veracity of the contents mentioned into the alleged Lease Deed are questionable hence the same deserves to be one amongst the triable issues into the present case.

9. It is further averred that the defendant neither received any amount of Rs. 3,01,000/- vide alleged cheque bearing no. 024075 dated 28.09.2018 into her bank in any manner. Further no alleged payment of Rs. 1,99,000/- by cash was ever made to the defendant in any manner whatsoever.

10. It is further averred in the application that as per the alleged lease deed the monthly rent of the premises depicted as being Rs.500/- only; that it is a matter of great surprise that how the said flat situated into the apartment society at the prime zone i.e. Delhi Police Society at Mayur Vihar, Delhi, measuring at 1,250 sq. yards (approx.), may fetch meagre rent of Rs. 500/- p.m only even though the market value of the said flat is more than one Crore Rupees and the said flat is well furnished with all amenities hence at least monthly rent of the said flat is Rs. 40,000/- p.m. Therefore, the mentioning of mere monthly rent of Rs. 500/- clearly establishes that the Lease Deed is a bunch of sham document. Thus, the plaint of the Plaintiff contained multiple tribal issues which could only be answered and determined through the trial.

11. It is further averred that the plaintiff underneath of the said sham Lease Deed which was allegedly executed for the period of 9 months i.e. from 01.10.2018 to 30.06.2019, by taking undue advantage of the situation, malafidely captured and occupied the said flat of the defendant for a total period of 30 months. It is further averred that even if it be presumed for sake of arguments that the rent of the premises was Rs. 500/- p.m. for 9 months then how the plaintiff was entitled to remain into the occupation of the said flat for next 21 months (i.e. from 01.07.2019 to 06.04.2021)

on the same rate of rent. Therefore, the defendant is bound to pay market rent i.e. Rs. 40,000/- p.m. for next 21 months i.e. the period beyond the Lease period of 9 months. Defendant neither paid the alleged rent of Rs. 500/- p.m. during the alleged tenure of Lease Deed nor paid rent as per market rate i.e. Rs. 40,000/- p.m. despite he remained into the possession of the flat for a longer period of 30 months without paying any single penny of the rent.

12. It is further averred in the application that the outstanding dues accrue due to the default and non-payment of rent, electricity charges, maintenance charges of society by the plaintiff for a longer period of 30 months, are much higher than the loan amount Rs. 5,00,000/- paid by the defendant to the plaintiff, therefore, the Plaintiff is not entitled for any decree of recovery of money into his favour.

13. It is further averred that the plaintiff shifted the burden of payment of the said outstanding upon the defendant on the pretext that the same shall be set-off into the loan amount of Rs. 5,00,000/-.

14. It is further averred that the cheque in question submitted by the plaintiff was taken by him from the defendant in blank form during September, 2018 in lieu of securing his debts of Rs. 5,00,000/- on the assurance that the same would not be misused and misappropriated in any manner whatsoever. The name, amount and figure mentioned into the said cheque is neither filled in the handwriting of the defendant nor the same was ever been issued to the plaintiff in due discharge of legal liability; that the cheque in question filed by the plaintiff, is not supported with

any dishonor memo which could reflect that on what reason the cheque was dishonored.

15. It is further averred that the plaint filled by the plaintiff is not supported with dishonored memo of the cheque in question therefore the inception of the 3 year limitation could not be commenced from the date of dishonor due to the absence of the requisite proof required as per order XXXVII of C.P.C. hence in these circumstances the limitation shall commenced from the date of extinction of the tenure of alleged period of tenancy as per Lease Deed in question; that in the present case 9 months period of the lease was completed on 30.06.2019, therefore the case filled by the plaintiff is beyond the period of limitation hence the same is not sustainable in the eye of law.

16. The plaintiff contested the instant application of the defendant seeking leave to defend by filing of the reply. 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 entries to the effect of dishonour of cheque in question i.e. 755390 are reflected in to the passbook of bank accoun of the plaintiff on 08.04.2021; that the defendant has admitted the execution of lease deed before the concerned registrar in favour of the plaintiff as well as admitted the receiving of part of the claimed amount from the plaintiff; that the defence of coercion taken by the defendant is afterthought and no such protest was ever raised by the defendant before the concerned sub registrar at the time of execution of lease deed and/or thereafter till date; that defendant is intended to grab the

hard earned money of the plaintiff by taking false, frivolous and vexatious pleas.

17. It is further averred by the plaintiff in reply that the defendant has admitted the receiving of amount from the plaintiff at the time of execution of registered lease deed; that the defendant does not have any triable issue and substantial defence involved in the present suit which needs trial, therefore, suit may be decreed as prayed.

18. It is further averred by the plaintiff in reply that the defendant has received the security amount as per the registered lease deed and in discharge of the said security amount, defendant has handed over the duly filled cheque in question to the plaintiff and the defendant is legally liable to refund the security amount against which the cheque in question was issued and handed over to the plaintiff by the defendant.

19. It is further averred by the plaintiff in reply that as per the terms of para 7 of lease deed, the defendant was required to refund the security amount Rs. 10,00,000/- to the plaintiff at the time of handing over the physical possession of the property but defendant has not refunded the security amount to the plaintiff hence there is no question of paying any rent as alleged by the defendant. Rather defendant is liable to pay an interest at the rate of 24% p.a on the security amount of Rs. ten Lakh since the date of its receiving till its realization as per market practice.

20. It is further averred by the plaintiff in reply that the defendant is not entitled to leave to defend the suit as no triable issue has been raised by the defendant. 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.

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

22. 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.”

23. Adverting to the facts of the present suit, it is the case of the plaintiff that the defendant and plaintiff entered into a registered lease agreement dated 28.09.2018 and as per the said lease deed defendant let out the Flat bearing No. C-22F, Delhi police apartment, Mayur Vihar phase-I Delhi-110091 and Rs. 10 Lacs were paid by plaintiff as security out of which Rs. 5 lacs was paid vide cheque no. 024075 dated 28.09.2018 and Rs. 3,01,000/- was paid by vide cheque no.024076 dt. 28.09.2018 and Rs. 1,99,000/- in cash. It is further averred by the plaintiff that at the time of handing over the possession of the said flat on 07.04.2021, the defendant issued a cheque of Rs. 10 lakhs in favour of the plaintiff, however the said cheque was dishonoured for the reason “fund insufficient”. On the contrary, it is contended by the defendant in the instant leave to defendant application that the defendant received only Rs. 5 lacs by way of the aforesaid cheque and the amount of Rs. 3,01,000/- vide cheque no.024076 dated 28.09.2018 and Rs. 1,99,000/- in cash was never received by the defendant from the plaintiff. It is further contended by the defendant that the lease deed dated 28.09.2018 is a sham agreement as the defendant was compelled to execute

the same without going through the contents of the same during her urgent need. In this connection, it is averred on behalf of the defendant that the said lease deed mention a rent of Rs. 500/- per month for the aforesaid flat which is a fully furnished flat located in a prime location and the market rate of rent of said flat is at least Rs. 40,000/- per month. It is further contended that the lease agreement was for 9 months but the plaintiff handed over the possession of the said flat after 30 months, therefore, the plaintiff is liable to pay rent for 21 months @ 40,000/- per month along with pending electricity and maintenance charges. As regards the cheque of Rs. 10 lakhs is concerned, it the case of the defendant that the said cheque was taken by the plaintiff in blank in September 2018 in lieu of the security debt with the assurance that the same would not be misused. It is also contended that the cheque in question is not supported with any dishonour memo.

24. It is seen that the defendant has admitted receipt of Rs. 5 lakhs from the plaintiff and it is contention of the defendant that registered lease deed is sham agreement which the defendant signed under compelling circumstances in the time of her urgent need without going through the contents of the same. In support of the said contention, the defendant relied upon the stipulation of the said lease deed which mention rate of rent of the aforesaid flat of Rs. 500/- per month which as per the defendant is far lower than the market rate of rent of the said flat. It is also the contention of the defendant that even though the monthly rent of the said flat is at least Rs 40,000/- per month but the plaintiff failed to pay even this rent of Rs. 500/- per month. Further, apart from the registered lease deed which the plaintiff contends as sham agreement, the plaintiff has not placed on record anything

to show payment of Rs. 3,01,000/- was paid by vide cheque no.024076 dt. 28.09.2018 and Rs. 1,99,000/- which has been disputed by the defendant. As regards the cheque of Rs. 10 lakhs in question, the defendant has disputed that the said cheque was issued by the defendant in discharge of legal liability of Rs. 10 lakhs as the plaintiff claims the security amount to be only Rs. 5 lakhs.

25. In view of the above contention of the defendant, the court is of the opinion that there are triable issues in the matter for which the defendant ought to be given opportunity to lead evidence to prove his defence. However, in view of the fact that the registered lease dated 28.09.2018 executed between the plaintiff and defendant mention about the payment of Rs. 10 Lakhs to the defendant, there are certain doubts about the genuineness and probability of the defence of the defendant.

26. Thus, in view of the aforesaid discussion, the Court is of the opinion that the defendant has raised triable issues but there is a reasonable doubt about the probability of the defense and genuineness of the triable issues raised by the defendant. Hence, defendant is only entitled to conditional leave to defend.

27. To sum up, this Court is of the view that the present matter comes within the principles contained in para 17.3 and also 17.4 of IDBI Trusteeship (supra), and based on the material on record, this Court is of the view that the defendants ought to be granted conditional leave to defend subject to deposit of 50% of the suit amount i.e. deposit of Rs. 5,00,000/- (Rupees Five Lakhs only) in the form of Fixed Deposit Receipt in the name of Court of DJ-06, East, Karkardooma Courts, Delhi within 30 days from today,

with an automatic renewal clause, failing which, the defendant shall not be permitted to contest the present suit.

28. The application for seeking leave to defend of the defendant is accordingly disposed of.

29. 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 25th day of April, 2025**

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