

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



PUNEET RAWAL

Vs.

ANIL BEDI

[CS No. 258/2023]

CNR No. DLET010081022023

**(ORDER ON LEAVE TO DEFEND APPLICATION)**

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1. In this suit for recovery of Rs. 13,05,000/-, defendants being husband and wife were served with the summons for judgment on 13.12.2023 and they filed an application for leave to defend under Order 37 Rule 3 (5) CPC on 22.12.2023 within the period of limitation. I have heard counsel for the defendants and gone through the written arguments filed on behalf of the plaintiffs and the record.

2. According to the averments of both the plaintiffs, the third floor of the property bearing No. 62, Radhey Shyam Park, Khreji owned by them was sold to the defendants for sum of Rs. 67 Lakhs. However, the sale deed was executed on 12.01.2021 for sum of Rs.26,10,000/-. Two cheques of Rs.13,05,000/- each

towards sale consideration was given by the defendants in the name of plaintiff no. 2. According to the plaintiffs, the less amount of sale consideration was shown in the sale deed at Rs.26,10,000/- according to mutual understanding, out of total sale consideration of Rs.67,00,000/-. Plaintiffs further stated that besides issuing two cheques of Rs.13,05,000/- each, defendants paid the balance amount of Rs.40,90,000/- in cash. It was also agreed upon that the cheques shall be presented after one month from the date of execution of the sale deed. It is alleged by the plaintiffs that one of the cheque bearing No. 000116 dated 12.01.2021 drawn on HDFC Bank issued from the account of defendant no. 1 on presentation was dishonoured on the ground of “payment stopped” on 01.03.2021. A legal notice of demand was issued on 06.06.2022 and ultimately the suit was filed in the court for recovery of the cheque amount of Rs.13,05,000/- with interest.

3. In the written arguments filed by the plaintiffs, now it is admitted that one another cheque issued of the same amount of Rs.13,05,000/- has been encashed and only the cheque in question in this suit was bounced. Defendants in their leave to defend application alleged that they had already made payment against this dishonoured cheque in the month of July, 2022 in presence of two witnesses namely Sh. Raj Kumar Sharma and Sh. Manpreet Singh who are ready to furnish their affidavits in this regard. Defendants further stated that they can produce the telephonic chats taken place between them and plaintiffs which will prove that nothing is due.

4. At one stage on 22.05.2026, some compromise talks took place between the parties. Defendants offered to pay Rs. 5 Lakhs towards full and final compromise but plaintiffs demanded Rs. 12 Lakhs. It was also told on behalf of the defendants that real controversy between the parties is relating to some unauthorized constructions.

5. No doubt, the defendants have not filed till date any proof of making payment of Rs. 13,05,000/- in cash in July, 2022 as alleged in the leave to defend application nor placed on record any affidavit of two witnesses and the telephonic chats as well as also admitted that they have purchased the property for Rs. 67 Lakhs from the plaintiffs but still the facts and circumstances of the case allows them to claim leave to defend unconditionally. Both the parties entered into sale transaction of the property for total Rs. 67 Lakhs but in the sale deed, this amount was shown only at Rs. 26,10,000/-. The defendants paid Rs. 40,90,000/- to the plaintiffs in cash as a black money without accounting the same which is not only illegal but also against the public policy in order to avoid the payment of stamp duty, to conceal the illegal money as well as to cheat the government. Such type of illegal transaction is to be treated as void under Section 25 of Indian Contract Act and recovery suit in respect of any balance amount pertaining to such illegal transaction is also not prima facie maintainable. Making of the huge cash payment of Rs. 40,90,000/- by the defendants to the plaintiffs and acceptance of the same by the plaintiffs is also an offence under Income Tax Act because the law prohibits making of cash payment beyond a permissible limit in respect of any business or personal

transaction. Thus, the illegal act done by the plaintiffs themselves creates a ground for grant of unconditional leave to defend to the defendants. In this regard, the counsel for defendants relied upon the decision of Hon'ble Delhi High Court in case **Narender Kumar Gola vs. Kishitiz Goel RFA 472/2022 decided on 18.05.2026.**

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 15-11-2021** 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 has 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 counsel for defendants also relied upon the decision of Hon'ble Supreme Court in case **B.L. Kashyap vs. M/s J.M.S. Steels 2022 LiveLaw (SC) 59** whereas counsel for the plaintiffs relied upon the decisions of Hon'ble Supreme Court in case **Andhra Pradesh Industrial Infrastructure Corporation vs. S.N. Raj Kumar AIR 2018 SC 1981**, **M/s Shri Colonizer & Developers Pvt. Ltd. vs. M/s Felicia Realcon India Pvt. Ltd. 265 (2019) DLT 138**, **Chander Pal Singh vs. Shripal Singh RSA 20/2022 decided on 17.02.2022 by Delhi High Court** to show how and under what circumstances leave to defend is to be granted or to be declined.

9. Since, here the issue involved is whether the sale transaction of the property entered into between the parties and the consideration paid in the manner which is against the law makes such transaction as illegal and void and whether such type of suit for recovery of the balance sale consideration amount is maintainable or not, I am of the opinion that unconditional leave to defend can be granted to the defendants even if, they are unable to show that any payment against the cheque in question is given to the plaintiffs. Hence, the leave to defend application is allowed unconditionally and defendants are given a chance to contest the case.

10. According to the averments of the plaintiffs as made in the plaint, they have received Rs. 40,90,000/- through cash as part of sale transaction of the property which is not reflected in the sale deed executed and apparently is given as black money and further defendants have not disputed making of this payment and instead also took a plea that they have paid another Rs. 13,05,000/- in cash in July, 2022 against the cheque in question, so let both the parties to show cause, why the matter should not be referred to Income Tax Department for proceeding against them as per law because the Hon'ble Supreme Court in case **The Correspondence RBANMS Educational Institute vs. B Guna Shekhar Civil Appeal No. 5200/2025 decided on 16.04.2025** has put an obligation upon the courts to report the matter to Income Tax Authorities, if the suit/deed mention cash transaction above Rs.2,00,000/-.

11. The present suit is now treated as an ordinary civil suit for recovery. Defendants are directed to file written statement on next date of hearing and advance copy of the same be supplied to the counsel for plaintiffs. Further both the parties are directed to file reply of the above show cause notice why the matter should not be sent to Income Tax Authority. Application of leave to defend is, thus, disposed off unconditionally.

**Dt- 31.07.2026.**

**(Ashwani Kumar Sarpal)**

**Principal District & Sessions Judge  
East District, Karkardooma Courts.**