IN THE COURT OF KISHOR KUMAR, ADJ-04 (EAST), KARKARDOOMA COURTS, DELHI.

Suit No. 628/20

Sh. Dhirender Kumar Rai

….........Plaintiff

Versus

Sh. Vipin Kumar Rai & Ors.

...........Defendants

20.04.2023

ORDER ON APPLICATION U/ORDER 37 rule 5 OF CPC FOR LEAVE TO DEFEND FILED BY DEFENDANTS

1. Vide this order, application of defendants filed U/o 37 rule 5 CPC dated 11.02.2021 seeking leave to defend shall stand disposed off.

2. Reply to the present application has been filed by and on behalf of the plaintiff.

3. I have heard Ld counsel for defendants, Ld counsel for plaintiff and have carefully gone through the record.

4. The present suit U/o 37 CPC has been filed by plaintiff against the defendants for recovery of Rs. 4,03,500/- contending

inter alia that defendants no.1 and 2 are husband and wife and they are known to the plaintiff for last many years. The defendants were in urgent need of money. Defendants approached the plaintiff in the second week of December 2018 and demanded a loan of Rs. 3 lakh from the plaintiff. Considering the need of the defendants, the plaintiff became ready to pay the aforesaid loan amount to the defendants, according to the wish and requirement. Plaintiff paid Rs. 3 lakh in cash on 20.12.2018 to the defendants. The defendants assured to the plaintiff that they shall return the loan amount within six months with interest @18% p.a. The defendants in discharge of their liability, had issued two post dated cheques in favor of the plaintiff in the sum of Rs. 2 lakhs dated 20.02.2019 and of Rs. 1 lakh dated 06.05.2019. Defendant no.2 assured the plaintiff that she is the owner of a built up house bearing H. no. 68, Khasra no. 262, Gali no.5, Shiv Park, Block-C, Prakash Nagar, Khora Colony, Dist. Ghaziabad, Uttar Pradesh-201309 and she handed over photocopy of the title documents of the aforesaid property to the plaintiff and assured that in case of any difficulty in payment of loan by the defendant no.1, she will return the loan amount to the plaintiff as a guarantor of the loan amount. Defendants also assured that they will pay the interest on the loan amount per month to the plaintiff at agreed rate of interest @18% p.a.

5. It is further contended by the plaintiff that thereafter on passing of one months, the plaintiff demanded the interest on the aforesaid principal amount of Rs. 3 lakh but the defendants did not

pay the interest to the plaintiff. Even after four months, the defendants did not pay the interest despite several demands made by the plaintiff.

6. After six months, the plaintiff demanded interest as well as principal loan amount from the defendants but the defendant no.1 instructed the plaintiff to present both the aforesaid cheques before his banker. Accordingly, plaintiff presented both the cheques for their encashment to the banker of defendant no.1 on 10.05.2019 but both the cheques were dishonored with returning memos dated 13.05.2019 for the reason 'Funds Insufficient'. Plaintiff immediately informed the defendants but the defendants kept on promising months after months that they will pay the loan but failed to do so. Thereafter, plaintiff filed a case U/Sec 138 of NI Act. Hence, the present suit filed claiming Rs. 3 lakh as principal amount and Rs. 1,03,500/- on account of interest till filing of the suit along with pendente lite and future interest @18% p.a.

7. The defendants put in appearance. Thereafter summons for judgments were issued to the defendants. Thereupon, the defendants filed the present leave to defend application.

8. It is the contention of the defendants that in the month of December 2012, the plaintiff approached defendant no.1 to start money committee, accordingly the defendant no.1, the plaintiff and other 28 persons started committee for a sum of Rs. 3 lakh. The bid for Rs. 3 lakh was not regular and some members ran away after

taking Rs. 3 lakh and not paid their respective shares/EMIS since the committee was going on loss.

9. It is further alleged by the defendants that on 15.09.2017, the last draw of committee allotted in the name of the plaintiff in loss of Rs. 3,000/- and remaining amount Rs. 2 lakh was to be paid after deduction of Rs. 90,940/- as the plaintiff had not paid his monthly installments against the committee of Rs. 3 lakh. It is further submitted by defendant no.1 that defendant no.1 paid a sum of Rs. 50,000/- in cash to the plaintiff and plaintiff took two blank signed cheque bearing no. 844631 and 505405 from the defendant no.1 for purpose of security against the balance amount of Rs. 1,50,000/- in presence of three members of committee, namely, Ajay Pandey and Jawahar Lal Prasad and Sanjay Singh all resident of Khoda, Ghaziabad, UP. It is further contended by defendant no.1 that on 22.05.2019, defendant no.1 sold his house which was in the name of his wife i.e defendant no.2 and thus she received a sum of Rs. 7 lakh as part sale consideration amount in her account of the petitioner from the purchaser. On 29.05.2019, defendant no.2 withdrew a sum of Rs. 2 lakh from her saving account and she had handed over a sum of Rs. 1,50,000/- to defendant no.1 for the purpose of making payment of Rs. 1,50,000/- in cash to the plaintiff. Accordingly on 01.06.2019, the defendant no.1 paid a sum of Rs. 1,50,000/- in cash to the plaintiff in the presence of committee members, namely, Ajay Pandey, Jawahar Lal Prasad and Sanjay Singh. Hence, no amount is outstanding qua defendant

no.1 in respect of committee of Rs. 3 lakh. After taking of entire amount of said committee from defendant no.1, plaintiff did not return the blank signed cheques to defendant no.1. Plaintiff misused the blank signed cheques after expiry of more than two years and filed the present frivolous case against the defendants to extort the money.

10. Rest of the case of the plaintiff has been denied being wrong and incorrect.

11. After going through the contentions of the plaintiff and rival contentions of both the defendants as contained in the leave to defend application, this Court is of the opinion that the defendants have been able to raise contentious and triable issues when they say that it was not loan as alleged by the plaintiff but it was the committee which was being run by the plaintiff. Further the defendants have stated in their leave to defend application, that they have returned the entire amount to the plaintiff which they took from the committee. However this fact has been controverted by the plaintiff in reply to leave to defend application.

12. It has been repeatedly held by the Hon'ble Apex Court as well as by various Hon'ble High Courts of the country that the defendant should get the leave to defend where the defendant has been successful in raising a triable issue and that the defence of the defendant is not a moon shine. The leave to defend can be granted by the Court to the defendant either conditionally or

unconditionally.

13. In view of the aforesaid facts and circumstances of the case, this Court is of the opinion that defendants are entitled to defend the suit of the plaintiff conditionally. Therefore, leave to defend application of the defendants is hereby allowed subject to the defendants furnishing an FDR in a sum of Rs. 1.50 lakh in the name of the Court. Application is accordingly disposed off.

Pronounced in the open court
on 20.04.2023

(Kishor Kumar)
ADJ-04 (EAST),
KKD, Delhi
20.04.2023