

**IN THE COURT OF MS. POOJA JAIN, ADDITIONAL
DISTRICT JUDGE-03, EAST DISTRICT,
KARKARDOOMA COURTS, DELHI.**

Civil Suit No. 511/2022

Supriya Jain

.....**Plaintiff**

Vs.

Sameer Rohtagi & Anr.

..... **Defendants**

11.01.2024

**Order on application under Order
XXXVII Rule 3 (5) of CPC**

1. This order will dispose off an application filed on 13.05.2022 under Order 37 Rule 3 (5) of the Code of Civil Procedure, 1908, herein after referred to as “the Code” for grant of leave to defend.
2. I have heard arguments of Ld. Counsels for the parties and perused the file.
3. The facts in brief which are necessary for disposal of this application are that plaintiff filed a summary suit under Order XXXVII of the Code for a decree in favour of the plaintiff for a sum of Rs.13,00,000/- (Rs. Thirteen Lacs only) alongwith 24% interest per annum during the pendency of the present suit against the defendant on the pleadings that defendants are real brothers and defendant no.1 is the elder brother and defendant no.2 is younger brother whose matrimonial proceeding is

pending before the Family Courts. It is averred in the suit that defendant no.2 met plaintiff in June 2020 and represented himself as divorcee who was looking for an independent working lady. Thereafter, they started meeting regularly and became friends. Defendant no.2 used to ask plaintiff about her financial status and monthly income. Defendant no.2 further apprised plaintiff that he got the divorce long back and showed his willingness to get settled with plaintiff. It was further agreed that after marriage both the parties will stay in a new house which they will jointly buy before the solemnization of marriage. Plaintiff further apprised defendant no.2 that she used to receive a cash payment from her client and after knowing this fact defendant no.2 used to receive cash from the plaintiff and as they already decided to marry each other so plaintiff did not ask for any receipt in this regard and defendant no.2 received Rs.19 lacs from the plaintiff in lieu to purchase a house and marriage expenses. The ring ceremony of plaintiff and defendant no.2 was performed on 02.12.21. Thereafter, defendant no.1 asked the plaintiff for a friendly loan of Rs.35 lac with assurance to return the money within four weeks. Plaintiff discussed the same with defendant no.2 and after his consent, gave Rs.25 lacs to the defendant no.1 only for four weeks. When plaintiff came to know about the pendency of his matrimonial dispute then the defendant no.2 returned Rs.19 lacs to the plaintiff. However, defendant no.1 also took a loan of Rs.25 lacs from the plaintiff and out of which returned only Rs.12 lacs and executed an acknowledgement in his handwriting that he will return the balance amount of Rs.13 lacs till 11.04.2022 but he failed to do so thereafter, defendant no.2 executed a promissory note in her favour but also failed to make the payment therefore, defendants are jointly liable to pay said admitted acknowledged amount of Rs.13 lacs with interest to the plaintiff. Plaintiff also sent a

legal notice to defendant no.1 but he sent a false reply to the plaintiff and even denied his handwriting. The claim of the plaintiff falls within the ambit of Order 37 of the Code. Hence, it is prayed that suit of the plaintiff may be decreed for a sum of Rs.13,00,000/- (Rs. Thirteen Lacs only) in his favour and against the defendants along with an interest @ 24% per annum to the plaintiff till realization of the amount along-with cost of the present suit.

4. In the application for leave to defend supported by affidavit, it has been pleaded by the defendant no.1 has no concern with the present case whereas falsely implicated him as he never executed any alleged receipt dt. 08.04.2022 and the same is forged and fabricated by plaintiff in order to cause wrongful loss to him. Defendant no.1 never approached the plaintiff for any kind of financial assistance at any point of time. It is further averred that when defendant no.1 never took any alleged loan amount of Rs.25 lacs from the plaintiff, therefore, there is no question of returning the amount of Rs.12 lacs to the plaintiff. The alleged receipt bears the description as GPA blood relation and no where shows the description of receipt or an affidavit which contrary to the contents of the plaint.

5. Defendant no.2 has averred that he has no liability to pay a single penny to the plaintiff as she herself stated in her plaint that she gave an amount of Rs.19 lacs to defendant no.2 in lieu to purchase a house and marriage expenses and the same was returned by defendant no.2 therefore, defendant no.2 has no liability to pay anything to the plaintiff. It is averred that defendant no.2 is litigating matrimonial dispute with his wife since 2015 whereas in the month of March, 2019, he came into contact with plaintiff through his friend Sh. Sanjay Aggarwal who introduced him to

the plaintiff on the pretext that the plaintiff is engaged in the business of legal consultancy and have good contacts with the police, advocates and local Ministers and can intervene in the matter of defendant no.2 to settle the same and disclosed the fact of litigation of defendant no.2 with his wife to the plaintiff. It is averred that plaintiff, aged about 38 years and unmarried started to meet defendant no.2 frequently and assured that she will put all her efforts to settle his matrimonial dispute with his wife. She proposed the defendant no.2 to enter into an agreement of marriage as she is getting inclined towards the defendant no.2 emotionally and the defendant no.2 who was living a bitter separation life with a dram to settle himself agreed for the ring ceremony which took place on 02.12.2021 and the expenses were incurred by the defendant no.2 himself. It is averred that plaintiff had attained the knowledge that defendant no.2 was looking for a flat for himself therefore, she introduced him with one Manish Dua, Property Dealer in Laxmi Nagar and one Sh. Rajesh Sharma who was the owner of the property bearing Flat no. S-2, 2nd Floor, A-22, Gurunanakpura, Laxmi Nagar, Delhi-110092 who was willing to sell the aforesaid flat and after negotiation the consideration amount was settled for sum of Rs.34 lacs. On 05.02.2022 after negotiation an oral agreement to sell was entered between defendant no.2 and Sh. Rajesh Sharma and sale deed was agreed to be executed on or before 03.05.2022. Due to non compliance thereof, defendant no.2 filed a suit for Specific Performance and Permanent Injunction which is pending before the Court of Sh. Sanatan Prasad Ld. ADJ(East), Karkardooma Courts titled as Sharad Rohatgi vs. Rajesh Sharma & Ors. vide civil suit no. 227/2022. It is averred that defendant no.2 came under a trauma when Sh. Rajesh Sharma filed a written statement in the aforesaid suit enclosed a sale deed dt. 12.04.2022 and an agreement to sell dt. 04.02.2022 in favour of plaintiff.

It is submitted that plaintiff in connivance with Sh. Rajesh Sharma made a false agreement to sell Dt. 04.02.2022 in her favour and on this basis get the sale deed dt. 12.04.2022 in her name. It is averred that the consideration amount was paid by the defendant no.2 from his hard earned money. The defendant no.2 never took a single penny from the plaintiff towards the alleged purchase of house and marriage expenses whereas the plaintiff is alleging falsely regarding the payment of Rs.19 lacs by her to the defendant in lieu of purchase of house and marriage expenses. Plaintiff used to approach to defendant no.2 on pretext that she need an amount for her business as she is facing a loss and on the request of the plaintiff, defendant no.2 paid the amount of Rs.8,70,000/- to the plaintiff by way of cheque which was duly cleared in the account of the plaintiff. Defendant no.2 never issued any alleged pronote in favour of the plaintiff at any point of time. On 11.04.2022, plaintiff in order to arrange meeting with some senior advocate took defendant no.2 to Chamber no.D-714 Karkardooma Court where he found 3 or 4 male young advocates alongwith 2-3 ladies advocate. One lady named Sonia started misbehaving with him which leads to a quarrel and he somehow came out from there but during this tussle the defendant no.2 lost his bag which was consisting of his blank signed documents and signed cheque book which he searched a lot but when he lost the hope to find the same, he made a written ittilapeshbandi to PS Farsh Bazar, Delhi. Thus, it has been prayed by the defendants that above triable issues needs consideration and can only be proved by leading evidence upon grant of leave to defend the captioned suit unconditionally. It has also been pleaded that leave to defend to defendants may be granted so that they may prove their defence to establish that plaintiff is not entitled for any relief and suit of the plaintiff is liable to be dismissed with heavy costs.

6. The plaintiff contested the application of the defendant seeking leave to defend on the ground that application is not maintainable as they have not raised any triable issue. The averments made in the application are false, frivolous, fabricated and based on concocted story. The defendant has failed to raise any triable issue. The plaintiff prayed for dismissal of the application.

7. I have heard Ld. Counsel for the parties and have perused the contents of application seeking leave to defend with supportive affidavit in the light of relevant provisions of Order 37 CPC.

8. Order 37 of CPC is a special enactment which provides for summary procedures of recovery in special circumstances. The essence of the summary procedure is that defendant is not, as in an ordinary suit, entitled of right to defend the suit, and for defending the suit he must apply for leave to defend within span of 10 days from the date of service of summons, and leave will be granted only if affidavit of defendant discloses such facts as will make it incumbent upon plaintiff to prove consideration or such other facts as Court may deem sufficient.

9. Apart from the legal propositions, I am aware of the judicial opinions expressed and the principles laid down in cases titled as:- (I) **B.L. Kashyap & Sons Ltd. vs. M/s JMS Steel and Power Corporation** (DOD as 18.01.2022 by Hon'ble Apex Court) (ii) **Goyal MG Cases Vs. Premium International** 138(2007)DLT 259. (iii) **S.C. Rastogi Vs. Renu Kalra & Another** 127 (2006) DLT 793 and (v) **Sunil Enterprises Vs. SBI Comm. & International Banking** AIR 1998 SC 2317.

10. In the case of **IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd** 2017(1) SCC 568, Hon'ble Apex Court modulated the principles laid

down in **Mechelec Engineers & Manufacturers v. Basic Equipment Corpn.**, (1976) 4 SCC 687] and it was observed as follows: -

“ 17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36] , as follows:

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 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.

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 court.....”

11. Though in the case of IDBI Trusteeship (supra), Hon’ble Apex Court observed that principles stated in paragraph 8 of Mechelec Engineers’ case (supra) 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 ordinary rule and denial of leave to defend being an exception.

12. Applying the principles aforesaid to the factual matrix of present case it is observed that plaintiff’s case is based upon a promissory note dt. 08.04.2022 executed by Sameer Rohtagi (defendant no.1). However, the stamp paper attached with the same as purchased by plaintiff herself whereby description of document is mentioned as Art. 48 GPA-blood Relation and name of second party is mentioned Sharad Rohtagi. The plaintiff has placed on record an agreement to sell entered into by her and one Rajesh Sharma to support her contention. It is further pertinent to note here that prior to the present suit, a separate suit for specific performance has been filed by defendant against Sh. Rajesh Sharma titled as, Shri Sharad Rohatgi v. Sh. Rajesh Sharma & ors. It is further relevant that defendants in the leave to defend application denied to have taken any loan from the plaintiff, execution of any promissory note and issuance of

cheque in her favour.

13. Moreover, the plaintiff has not filed any document to show the source from where she arranged the money for giving to the defendants, because allegedly plaintiff gave such a huge amount of Rs. 25 lacs (out of which Rs.13 lacs is due) in cash. This also needs trial.

14. In view of above discussion, this Court is of the opinion that the defendants have been able to create a doubt which leads to some disputed questions of fact, which are triable and requires evidence to be led on behalf of the parties.

15. From perusal of the above law laid down by Hon'ble Supreme Court, this Court is of the considered opinion that the case of defendants seems to be covered within para no. 17.2 of IDBI Trusteeship Services Case (supra).

16. In view of the aforesaid facts and submissions made, the defendants are entitled to unconditional leave to defend the suit. In view of the above, the defendant has been able to show that there are triable issues. Hence, the present application for leave to defend filed on behalf of the defendants is allowed. Let written statement be filed within prescribed period with advance copy of the same to plaintiff.

Application is disposed off accordingly.

Announced in open court
Dated: 11.01.2024

(POOJA JAIN)
Additional District Judge-03
East/Delhi/11.01.2024