

**IN THE COURT OF SH KAPIL KUMAR, ADDITIONAL
DISTRICT JUDGE-01, NORTH EAST DISTRICT,
KARKARDOOMA COURTS, DELHI**

CS No. 57/2023

Lokesh Kumar
S/o Sh Ram Chander

.....Plaintiff

Vs.

1) Sh Bhagat Singh

2) Pankaj Singh
S/o Sh Bhagat Singh

....Defendants

ORDER

1. Vide this order, I intend to dispose off the application for leave to defend moved on behalf of defendants.

2. The case of the plaintiff is that the defendant no.1 was the guard in the same school at Vijay Park wherein plaintiff was Principal. It is stated that defendant no.1 sought financial help from the plaintiff to perform marriage in his family for which Rs 3,50,000/- was given to defendant no.1 out of which Rs 2 Lacs were given vide cheque no. 70948 dated 01.02.2021 drawn on State Bank of India which was encashed by defendant no.2 and Rs 1,50,000/- was given as cash.

3. It is stated that payment of Rs 2 Lacs is being reflected in the statement of bank account of the plaintiff. It is stated that despite various requests the loan was not returned to the plaintiff. It is stated that after various persuasion, the defendant no.1 paid Rs 30,000/- in cash to the plaintiff on 25.09.2022 and also issued a cheque of Rs 3,20,000/- bearing no. 000006 dated 25.10.2022 drawn on Andhra Bank with the assurance that same will honored on presentation.

4. It is stated that the cheque was presented for payment but the same got dishonored. It is further stated that plaintiff tried to contact the defendants but they started avoiding the plaintiff. It is further stated that legal notice dated 13.02.2023 was issued upon the defendants which was received by the defendants on 15.02.2023 but even then no payment was made and hence the present suit was filed.

5. The defendants put appearances and thereafter moved the application for leave to defend.

6. Vide application for leave to defend it is stated that the defendants are not under any liability to pay any amount to the plaintiff and the present suit is a false one just to extort the money from the defendants.

7. It is stated that the plaintiff assured that the defendant no.1 that he will help him to get the job for his son (defendant no.2) as a security guard in his school for which the plaintiff had taken the blank signed cheque from the defendant no.1 along with the photocopies of various documents. It is stated that plaintiff also took Rs 50,000/- from defendant no.1 in cash on 21.08.2022 but the plaintiff did not help defendant no.1 for securing the job of defendant no.2 as security guard in the school. It is stated that it is the plaintiff who is required to pay Rs 50,000/- to the defendant no.1.

8. It is stated that the cheque has been misused by the plaintiff by filing the present false suit and as such the defendants be granted to unconditional leave to defend. Ld Counsel for the defendants relied upon judgment titled as **Ms Deep Shikha @ Dolly vs Smt Archana Jain RFA no. 355/2022 decided by Hon'ble High Court of Delhi on 02.06.2023.**

9. The reply to the present application has been filed on behalf of the plaintiff wherein all the averment of defendants have been denied. It is also submitted that the defendants made a false story as a defence to the present suit which cannot be relied upon. It is further submitted that there is no triable issue in the present matter.

10. During the course of arguments Id Counsel for plaintiff strongly relied upon his bank statement as per which Rs 2 Lacs in cash was taken by defendant no.2 via cheque from the bank of the plaintiff on 01.02.2021.

11. I have heard arguments advanced by both the parties and carefully perused the records.

12. In **Mechelec Engineers and Manufacturers vs Basic Equipments Co-corporation (1976) 4SCC 687**, the Hon'ble Supreme Court has laid down the guidelines for grant of leave to defend the suit : -

- (i) if the defendant satisfied the Court that he has a good defence to the claim on merits, the defendant is entitled to unconditional leave to defend;
- (ii) if the defendant raises a triable issue indicating that he has a fair or a bonafide or reasonable defence, although not a possible good defence, the defendant is entitled to unconditional leave to defend;
- (iii) if the defendant discloses such facts as may be deemed sufficient to entitle him to defend, i.e. if the affidavit discloses that at the trial he may be able to establish a defence to the plaintiff's claim, the Court may impose conditions being as to time of trial or mode of trial but not as to payment into Court or furnishing security;

(iv) if the defendant has no defence, or if the defence is sham or illusory or practically moonshine, defendant is not entitled to leave to defend;

(v) if the defendant has no defence or defence is illusory or sham or practically moonshine, the court may show mercy to the defendant by enabling him to try to prove a defence but at the same time protect the plaintiff imposing condition that amount claimed should be paid into court or otherwise.

13. Further in the judgment titled as **B.L Kashyap & Sons Limited vs J.M.S Steels and Power Corporation & Anr (2022) 3SCC 294** it was held by Hon'ble Apex Court that while dealing with an application seeking leave to defend it would not be correct approach to proceed as if denying leave is the rule or that leave to defend is to be granted only in exception cases or only in cases where defence would appear to be meritorious one. It was further held that if the defendant indicates that he has a fair or a reasonable defence, he is ordinarily entitle to unconditional leave to defend, unless there be any strong reason to deny leave. The Hon'ble Apex Court further held that if there remains are reasonable doubt about the probability of defence, sterner or higher conditions could be imposed while granting leave to defend but denying leave would be ordinarily countenanced only in such cases where defendant fails to show any genuine triable issue and court finds defence(s) to be frivolous or vexatious.

14. This is the suit for recovery of Rs 3,20,000/- filed by the plaintiff. The cheque as relied upon by the plaintiff bears the signatures of defendant no.1. The alleged loan was stated to be given to defendant no.1 through defendant no.2.

15. The bank statement account as relied upon by the plaintiff reveals that the cash was allegedly withdrawn by defendant no.2. The cheque in question on the basis of which the present suit has been filed has not been signed by defendant no.2. This inturns reveals that the amount of Rs 2 Lacs was taken by defendant no.2 from the account of the plaintiff but the cheque in question was not issued by the defendant no.2.

16. There is no document on record as to the alleged payment of Rs 1,50,000/- in cash by the plaintiff. The plaintiff is a government servant. It is not the case of the plaintiff that he withdrew further cash of Rs 1,50,000/- from his account and thereafter handed over to defendant no.1. This is a open question.

17. Ld Counsel for defendants argued that it was not defendant no.2 who took cash from the account of the plaintiff as alleged by the plaintiff while relying upon the statement of account. It is submitted that plaintiff has not filed his previous cheque on record which was allegedly issued in the name of defendant no.2 vide which the cash was allegedly withdrawn. This argument of Ld Counsel for defendants has merits as merely mentioning the name “Pankaj” in the statement of account is not carrying any presumption as to the withdrawal by defendant no.2 whose name is Pankaj Singh.

18. It is a fact of common knowledge that when any bearer cheque issued in the name of third person vide which the cash could be withdrawn then the bank always take the endorsement on the back side of the cheque of the person to whom the cash was handed over. The plaintiff could have procured that document from the bank or the copy of the same and could have placed on record of the present suit in support of his case. No

such document is on record.

19. If only the cheque on the basis of which the present suit has been filed is considered then the cheque bears the signatures of defendant no.1 only, however as per the case of the plaintiff the cash was withdrawn by defendant no.2. The summary suit is not maintainable against both defendants when cheque in question is signed by one defendant only.

20. All above-facts, as discussed, raises triable issues and requires leading of evidences by the parties. The defence as set up by the defendants seems to be a reasonable one. The defendants are entitled to unconditional leave to defend and the same is hereby granted accordingly. In view of the same, leave to defend application of the defendants is hereby allowed. Ordered accordingly.

**Typed to the direct dictation and
announced in the open court
on this 8th December 2023**

**(Kapil Kumar)
ADJ-01, North-East
KKD Courts, Delhi/
08.12.2023**