

**IN THE COURT OF AASHISH GUPTA, DISTRICT JUDGE-01,  
NORTH-EAST DISTRICT, KARKARDOOMA COURTS, DELHI**

In the matter of

**RCA DJ No. 56/25  
CNR No. DLNE010032882025**

Mr. Surendra Giri  
S/o Sh. Mahender Giri  
R/o J-591, Gali No. 3,  
Near Nav Jeevan Adarsh Public School,  
Jai Prakash Nagar, Ghonda,  
Delhi - 110053

..... Appellant

versus

Sh. Bitu  
S/o Sh. Baburam  
R/o H.No. B-282, Gali No. 4,  
Mahalaxmi Enclave,  
Karawal Nagar,  
Delhi - 110094

..... Respondent

**Date of institution : 04.11.2025  
Reserved on : 29.01.2026  
Date of Decision : 13.03.2026**

**JUDGMENT**

1. The present first appeal impugns the order and decree dated 02.04.2025 passed in Civ Suit No. 412/20 (hereinafter referred as

the 'impugned order/decree') whereby the Ld. Trial Court has decreed the suit of plaintiff.

2. Appellant was defendant before the Ld. Trial Court.
3. Appellant/defendants's leave to defend application before the trial court came to be dismissed vide impugned order dated 02.04.2025 and as a consequence, a decree for a sum of Rs. 2 lac with pendente lite and future simple interest @ 6% per annum has been awarded to the plaintiff. Being aggrieved, the defendant is an appeal before this court.
4. For the sake of convenience, parties shall be referred to by the nomenclature used in the Ld. Trial Court.
5. In brief, plaintiff/respondent had sued the defendant on the ground that he gave a sum of ₹2 lakhs in cash as a friendly loan for a period of five months on 1 May 2019. At the time of grant of loan, a receipt in this regard was also executed between the parties.
6. Plaintiff claims that eventually a cheque in discharge of the said liability was issued by the defendant on 01.10.2019 to the plaintiff which got dishonoured on presentation. Thus, plaintiff sued the defendant for recovery of the said amount.
7. The defendant's application for leave to defend was premised on the ground that he only took a loan of ₹1.5 lakhs from the plaintiff; the said loan was partly repaid to the extent of ₹1 lac;

and the defendant is willing to repay the remaining amount of ₹50,000. It is also the case of the defendant that he had approached the plaintiff in first week of October 2019 for repaying the balance amount of Rs. 50,000/- and asked the plaintiff to return the original cheque. Plaintiff, as per defendant told him that the same was not traceable and undertook to return the same as and when the same is available. The said cheque is stated to be a security cheque and is claimed to have been misused by filling up the same (see para 8, 10 and 11 of the leave to defend application).

8. This defence of the defendant was disallowed by the Ld. Trial Court by treating it as frivolous and vexatious. In the opinion of the learned Trial Court, since the defendant did not specify any date or time of repayment of the amount of ₹1 lakh, therefore, the defence of the defendant cannot be believed. The reasoning of the learned Trial Court is contained in para 8 of the impugned order and the same reads as under:

8. Upon perusing the leave to defend application, it is found that the only defence raised by the defendant is that the plaintiff has misused the blank cheque given by the defendant to the plaintiff and that the plaintiff has filed a false and fabricated case demanding Rs.2,00,000/- instead of Rs.50,000/- which is the actual liability of the defendant in favour of the plaintiff. However, the defendant has not provided any specific details or annexed any documents to make his defence believable. He has failed to state when exactly the alleged loan of Rs.1,50,000/- was taken by him from the plaintiff and when it was repaid partly in cash. He has not provided any details regarding the repayment of Rs. 1,00,000/- to the plaintiff including the date and time or the

presence of any witnesses or issuance of any receipt in his application. Further, no bank statement or withdrawal proof has been placed on record to substantiate the claim of the defendant of arranging Rs. 1,00,000/- in cash. Merely making a bald statement that only an amount of Rs.1,50,000/- was taken as loan from the plaintiff out of which Rs. 1,00,000/- has been repaid does not raise a triable issue in favour of the defendant. The plaintiff, on the other hand, has placed all relevant documents including his bank statements reflecting a withdrawal of Rs.2,50,000/- by him on 01.05.2019 to prove that a friendly loan was advanced by the plaintiff to the defendant in the sum of Rs.2,00,000/-.

9. Counsel for the appellant argued that the Ld. Trial Court did not consider the valid plea of defence raised by the defendant. It was argued that while deciding a leave to defend application, only plausible defence is required to be raised by the defendant. It was submitted on behalf of the defendant that defendant fairly admitted the fact that he took a sum of ₹1.5 lakhs from the plaintiff; that he is ready and willing to repay the outstanding amount of ₹50,000; and that he has already repaid ₹1,00,000 to plaintiff.
10. It was argued that even though the date of the repayment has not been stated in the application, this fact would have been disclosed by the defendant in the written statement which would eventually be filed by the defendant. It is the submission of the counsel for defendant that if one considers the plea taken by the defendant before the Trial Court, the said plea cannot be treated to be vexatious or frivolous. Thus, it was submitted that unconditional leave to defend should have been granted to the defendant.

11. On the other hand, counsel for the respondent argued that there is no infirmity in the impugned order and the same is as per law. Thus, respondent prayed for dismissal of the present appeal.
12. I have given thoughtful consideration to the arguments of the parties and have gone through the record.
13. In my humble opinion, the plea taken by the defendant in the leave to defend application cannot be treated as vexatious or frivolous. The defendant has specifically stated that he only took a loan of ₹1.5 lakhs from plaintiff; that he repaid ₹1,00,000 to plaintiff; and that he is willing to repay the remaining amount of ₹50,000 to plaintiff. It is also pleaded in the application that the cheque in question was a security cheque given by defendant and the same was filled up by plaintiff for a sum of Rs. 2 lac.
14. In my humble opinion, even though the learned trial court took note of the judgment passed in the matter of **B.L. Kashyap & Sons Ltd. v. M/S JMS Steels & Power Corporation & Anr. arising out of SLP (C) NO. 19413 OF 2018) decided on 18th January 2022**, but, it did not appreciate the ratio of the said judgment in the right perspective. A bare perusal of the said judgment would show that only in cases where the defence raised by the defendant is vexatious or frivolous that the leave to defend application of the defendant can be dismissed.
15. But, in cases where either a substantial defence or **fair/reasonable defence, although not a positively good defence** is raised, plaintiff

is not entitled to judgment and in such cases ordinarily an unconditional leave to defend should be given. In the same judgment, it is noted that if some amount is admitted by the defendant, leave to defend shall not be granted to the defendant, unless the amount so admitted is deposited in Court by the defendant.

16. In the present case, defendant claims that he only took a loan of Rs. 1.5 lac and has repaid Rs. One lac. He claims that he is willing to repay the amount of Rs. 50,000/- to plaintiff. Thus, at least part admission was made by the defendant of his liability and the Ld. Trial Court should have directed the defendant to deposit the said sum of Rs. 50,000/- in Court.

17. With respect to the remaining claim, there are two versions of the parties. One is of the plaintiff who claims a loan of Rs. 2 lac (supported by a written receipt and a cheque dated 01.10.2019). On the other hand, defendant claims that the said receipt is forged and his liability was only to the extent of Rs. 1.5 lac of which Rs. 50,000/- is only due. Even if defendant did not have any documents to show repayment of Rs. One lac or did not produce any receipt/bank statement/withdrawal proof of the same, still there is an oral claim of repayment made by defendant. The omission to give the date of repayment cannot be treated as fatal to the claim of defendant qua the payment. Defendant could specify the said dates in his detailed written statement.

18. At the stage of deciding an application for leave to defend, a Court is only required to see as to whether defendant has any substantial defence or a fair/reasonable defence (although not positively good defence). It is only in cases where the defence is found to be frivolous or vexatious can the application for leave to defend be dismissed.
19. In my humble opinion, defendant fairly admitted the part case of the plaintiff to the extent of Rs. 50,000/-. He then proceeded to dispute the remaining amount and this defence, even if oral and unsupported by any document, cannot be treated to be frivolous or vexatious. Even if the same is not treated as substantial defence, it is a fair and reasonable defence raised by the defendant qua the liability being set up by the plaintiff.
20. Thus, in my humble opinion, the impugned order/decreed cannot be sustained in law.
21. Since the defendant had admitted part claim of the plaintiff, the Ld. Trial Court should have directed the defendant to deposit the admitted amount of Rs. 50,000/- in Court before considering the application for leave to defend. This was in light of second proviso to Order XXXVII Rule 3 (5) CPC. Thereafter, for the remaining amount of Rs. 1.5 lac, the Trial Court could have considered the leave to defend application and an unconditional leave to defend should have been granted to the defendant by allowing him to file his written statement. The Ld. Trial Court

erred in law by treating the defence of defendant as vexatious and frivolous.

22. Thus, considering the above, in my humble opinion, plaintiff is only entitled to a part decree of Rs. 50,000/- (i.e the amount admitted by defendant as payable to plaintiff). It is ordered accordingly. Defendant is granted 4 weeks from today to pay the said amount to the plaintiff, failing which he shall be liable to pay simple interest @ 6% from the date of default till realization.

23. For the remaining amount of Rs. 1.5 lac, defendant is granted unconditional leave to defend. He is at liberty to file his written statement within 30 days from today before the Ld. Trial Court who shall then proceed to adjudicate the suit for the said amount, as per law.

24. Let part decree sheet for the amount of Rs. 50,000/- awarded to the plaintiff be drawn.

25. Let copy of the judgment passed in appeal alongwith the part decree sheet be sent to Ld. Trial Court for necessary information.

**Announced in the  
open Court on 13.03.2026**

**Aashish Gupta  
District Judge-01, North-East District,  
Karkardooma Courts, Delhi**