

06.08.2025

Present: Sh. Parveen Dabas, Ld Counsel for the plaintiff
Ms Deepa, Ld Counsel for the defendant (Through VC)

Matter is listed for arguments on the application filed by the defendant for seeking leave to defend under order 37 Rule 3 (5) of the CPC along with another application filed under Order 37 Rule 7 of the CPC seeking condonation of delay in filing the said application

Arguments on both the applications have been heard.

Firstly coming to the condonation application filed by the defendant seeking condonation of delay of five days in filing the application for leave to defend under Order XXXVII Rule 3(5) CPC.

It is submitted by the Ld. Counsel for the applicant/defendant that the applicant/ defendant received the summons for judgment along with the plaint on or around 11.08.2024, wherein it was indicated that applicant/defendant was required to attend court on 05.09.2024. It is further submitted that applicant/defendant was under the bona fide impression that her appearance before the court on the said date would suffice and did not realize that an application for leave to defend had to be filed within 10 days of service. It is further submitted that when the applicant/defendant contacted her counsel on 24.08.2024, for taking necessary steps in the matter before the hearing scheduled on 05.09.2024, the

applicant/defendant came to know of the legal requirement regarding limitation and thereafter, the application was prepared and filed without further delay.

In response, learned counsel for the plaintiff has opposed the application contending that the defendant had ample time to take legal advice and that ignorance of law is not a sufficient ground for condonation of delay. It is submitted that strict compliance with procedural timelines is essential in a summary suit and the defendant has not disclosed any sufficient cause for the delay.

I have considered the rival submissions and perused the record. Order XXXVII Rule 3(5) CPC mandates that the defendant is required to enter appearance within ten days of service of summons for judgment and to seek leave to defend within the prescribed period. However, Rule 3(7) of the said order read with Section 151 CPC empowers the court to condone delay in filing such application if sufficient cause is shown. It is trite law that the expression "sufficient cause" must be given a liberal construction in order to advance substantial justice, particularly when no gross negligence or deliberate delay is attributable to the party.

In the present case, the delay in filing the application for leave to defend is of a brief duration of *five days* and is stated to be due to the defendant's mistaken impression based on the contents of the summons, which mentioned a hearing date of 05.09.2024. The explanation offered appears to be plausible and bonafide and there is no indication of any intentional delay or wilful disregard of the process of law. ***Considering the brief nature of the delay which has been sufficiently explained and in***

the interest of justice, the delay of five days in filing the application under Order XXXVII Rule 3(5) CPC is hereby condoned. The condonation application filed by the applicant/defendant stands allowed and is disposed of accordingly.

Now coming to the second application of the defendant filed under Order 37 Rule 3(5) CPC seeking leave to defend the summary suit instituted by the plaintiff for recovery of a sum of ₹35,00,000/- along with interest.

As per the case set up by the plaintiff, during early 2019, the defendant offered to sell a third-floor under-construction property bearing Plot No. B-22, Gali No. 10, Village Krishna Park Extension, New Delhi – 110018 for ₹65,00,000/-. It is alleged that the plaintiff allegedly paid a sum of ₹30,00,000/- in cash by 11.03.2019 and a further ₹5,00,000/- in cash on 03.06.2019, totaling ₹35,00,000/-, against which an Agreement to Sell was executed on 11.03.2019. It is further alleged that the defendant failed to execute the sale deed despite repeated assurances and ultimately issued the subject cheque, which was dishonoured with remarks "Funds Insufficient".

In her application, the defendant has taken the stand that the cheque in question was never issued in discharge of any legally enforceable debt or liability but was given purely as a security instrument at the time of Agreement to Sell dated 11.03.2019 that did not culminate in a concluded contract. It is further contended that by the defendant that she was the lawful owner of the property bearing *Plot No. B-22, Gali No. 10, Village Krishna Park Extension, New Delhi-110018, measuring 150 sq. yards* and under construction in 2019 and the plaintiff and his associate Chetan Malhotra approached the defendant and her

husband to purchase the third floor of the property and after due negotiation, the total sale consideration was agreed upon at ₹65,00,000/-. It is further contended that out of the said amount, the associate of the plaintiff, namely Sh. Chetan Malhotra, allegedly paid ₹21,00,000/- in two parts and subsequently, on 11.03.2019, an Agreement to Sell and Purchase was executed between the plaintiff and the defendant.

It is further contended that though the transaction was negotiated and managed by Chetan Malhotra, the plaintiff became the signatory party under the agreement, representing that he and Chetan Malhotra were partners and acted jointly in real estate transactions. It is further contended that the defendant handed over a blank signed cheque purely as security, at the time of execution of the said agreement to secure the interest of the parties and it was never intended to be used as an instrument to initiate recovery proceedings. It is further contended that thereafter, further payments were made by Sh. Chetan Malhotra — ₹5,00,000/- at the time of the third lintel and ₹30,00,000/- at the fifth lintel stage — thereby completing the total consideration. It is further contended that after full payment, the defendant was instructed to execute the sale deed in favour of one Smt. Neha Malhotra, wife of Chetan Malhotra. It is further contended that it was represented by the plaintiff and Chetan Malhotra that the property would be registered in Neha Malhotra's name for tax planning purposes, since all of them were partners in business.

It is further contended that in compliance with their instructions, the defendant executed all necessary sale documents in favour of Smt. Neha Malhotra in the year 2019–2020 and the

deal was concluded in all respects. It is further contended that the continued possession of the blank cheque by the plaintiff and his partner was no longer required and on being asked to return the cheque, the plaintiff repeatedly stated that the cheque was misplaced and would be returned once found and after a lapse of more than three years, the plaintiff allegedly misused the said blank cheque to initiate the present recovery proceedings, after filling in the amount of ₹35,00,000/- and date as per his own convenience.

Accordingly it is contended that the present suit discloses multiple triable issues which can only be determined by way of full-fledged trial, involving oral and documentary evidence. In light of the foregoing, Ld Counsel for the defendant prays that unconditional leave to defend the suit be granted, or on such terms such terms as this Court deems just and proper in the interest of justice.

On the other hand, Ld Counsel for the plaintiff has strongly opposed the application, submitting that the cheque was issued in clear acknowledgment of liability and the fact of dishonour is sufficient to establish the defendant's default. It is argued that the defence raised is vague, frivolous, and aimed at prolonging the matter. It is submitted that there is no documentary evidence that the cheque was given as security and the defence is an afterthought raised only to delay the adjudication.

I have considered the submissions of learned counsel for both sides and carefully perused the pleadings and record. The principal issue before this Court is whether the defence

raised by the defendant discloses substantial, bona fide triable issues which would justify grant of leave to defend.

The law relating to the grant of leave to defend and / or not to grant the leave, has been expounded by the Hon'ble Apex Court in the case of ***Mechelec Engineers and Manufacturers v. Basic Equipment Corporation : AIR 1977 SC 577***. The principles for consideration of a prayer for leave to defend in a summary suit were laid down by the Hon'ble Court in the following terms :-

“8. In Kiranmoyee Dassi Smt. v. Dr J. Chatterjee [AIR 1949 Cal 479 : 49 CWN 246, 253 : ILR (1945) 2 Cal 145.] Das, J., after a comprehensive review of authorities on the subject, stated the principles applicable to cases covered by Order 17 CPC in the form of the following propositions (at p. 253):

“(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 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 has a defence, yet, shews such a state of facts as leads to the inference 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 the 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 only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence.”

In the case of ***IDBI Trusteeship Services Ltd. v. Hubtown Ltd. : (2017) 1 SCC 568.***, the Court modulated the aforementioned principles and laid down 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.”

It is at once clear that even though in the case of *IDBI Trusteeship (SUPRA)*, this Court has observed that the principles stated in paragraph 8 of *Mechelec Engineers' (SUPRA)* case 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 the ordinary rule and denial of leave to defend is an exception.

In the present case, while the defendant does not deny issuance of the cheque or the execution of the Agreement to Sell, she attempts to challenge the nature of the transaction by alleging that the cheque was issued as security and that payments were made by a third party. However, she has failed to produce any document to show that the cheque was issued as a security or that Chetan Malhotra had any authority to act on behalf of the plaintiff. No written acknowledgment, agreement, or proof of partnership between the plaintiff and the said Chetan Malhotra has been filed. The Agreement to Sell- copy of which is on record is a bilateral document executed between the plaintiff and the defendant and no role of any third party is reflected therein. That said, the defendant has raised a triable issue and with respect to the nature of the consideration underlying the issuance of the cheque, especially in light of her assertion that the transaction did not result in the plaintiff acquiring the property. Although the defence appears weak and lacking in documentary corroboration, the existence of a written agreement between the parties and the nature of dispute does raise a plausible albeit not strong defence, which ought to be tested by way of evidence.

Therefore, following the legal principles laid down in M/s Mechalec Engineers & Manufacturers v. Basic Equipment Corporation, (SUPRA), and applying the rationale of IDBI Trusteeship (supra) and B.L. Kashyap (supra), a conditional leave to defend is granted to the defendant, subject to deposition of 50% of the cheque amount within thirty days from today, failing which the leave shall stand declined and the plaintiff shall be entitled to judgment forthwith in terms of Order 37 Rule 3(6) CPC.

Defendant is also directed to file WS within thirty days from today with an advance copy to the other side.

List the matter for compliance and further proceedings on 19.09.2025.

(Ravinder Singh II)
DJ-04, North, Rohini Courts,
Delhi/06.08.2025