

IN THE COURT OF SH. RAVINDER SINGH- II
DISTRICT JUDGE-04 (NORTH)
ROHINI COURTS, DELHI

CS No. 275/2024

CNR No. DLNT01-004642-2024

MR SUBHASH CHAND GARG

S/o Sh Barumal

R/o F-2/103-104, 3rd floor,

Rohini, Sector 16

Delhi - 110089

PLAINTIFF

VS

SH MIRZA QAYAM RAZA

S/o Mirza Mohd Iftikhae

R/o H.No B-276, 3rd floor, Gali no. 6

Subhash Mohalla, North Ghonda garhi Mendu,

Delhi – 110053

DEFENDANT

ORDER

1. Vide my present order, I shall dispose off the application filed by the defendant under order XXXVII Rule 3(5) of the Code of Civil Procedure (*hereinafter said as the 'CPC'*) seeking unconditional leave to defend the present summary suit filed by the plaintiff for recovery of a sum of Rs. 4,50,000/-.
2. The case of the plaintiff in brief is that the defendant, who was personally known to him, approached the plaintiff on 03.03.2023 seeking financial assistance in the form of a friendly loan of ₹4,50,000/-. It is averred that the plaintiff agreed to extend the said financial assistance on the condition that the defendant execute a promissory note in his favour. Pursuant thereto, the defendant

executed a promissory note in favour of the plaintiff for the said sum in the presence of two attesting witnesses. According to the plaintiff, the defendant accepted and availed the said loan amount but failed to repay the same despite repeated demands and reminders. Hence, the present suit under Order XXXVII CPC has been instituted by the plaintiff against the defendant seeking a decree for ₹4,50,000/- along with interest and costs.

3. The defendant, in his application, has sought unconditional leave to defend on the ground that there exists no legally enforceable debt or liability in favour of the plaintiff. It is contended that the alleged loan of ₹4,50,000/- was advanced in cash and is therefore in contravention of Section 269SS read with Section 69C of the Income Tax Act, rendering it not legally recoverable. The defendant has further alleged that the plaintiff is engaged in money-lending without a valid licence and has filed the present suit on the strength of forged and fabricated documents.
4. The defendant has denied having ever borrowed ₹4,50,000/- from the plaintiff. Instead, it is his case that in March 2022, through one Irfan, an auto driver residing at Mustafabad, he had sought financial help of ₹30,000/- for the repair of his auto, of which only ₹27,000/- was transferred to his account on 01.04.2022, subject to interest of 10% per month. It is further contended that at the time of disbursement, the plaintiff allegedly obtained the defendant's signatures on blank papers and a blank promissory note. The defendant claims that he made part-

payments towards interest, namely ₹2,500/- on 10.05.2022, ₹2,500/- on 06.06.2022, another ₹2,500/- on 06.06.2022, ₹3,000/- on 16.08.2022, and ₹3,000/- on 20.09.2022, through online transfers. Thereafter, due to business losses, he could not continue paying interest. The allegation is that the plaintiff misused the blank signed papers to fabricate a promissory note showing a loan of ₹4,50,000/-.

5. It is also contended that the promissory note relied upon by the plaintiff is forged, fabricated, unstamped, and unregistered and is therefore, inadmissible under Section 35 of the Indian Stamp Act and Section 17 of the Registration Act. The attesting witnesses to the promissory note are stated to be unknown to the defendant. On these premises, Ld. counsel for the defendant submits that the plaintiff's claim is false, triable issues arise and unconditional leave to defend ought to be granted.
6. Conversely, learned counsel for the plaintiff without filing any written reply has argued that no triable issue has been raised by the defendant and the defence raised by the defendant is illusory and sham and accordingly, it is argued that the application is liable to be dismissed.
7. *I have considered the submissions raised by both the sides and further have carefully perused the pleadings and the 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.

8. 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.”

9. In the case of ***IDBI Trusteeship Services Ltd. v. Hubtown Ltd. : (2017) 1 SCC 568***, the Hon’ble apex 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.”

10. It is evidently clear that even though in the case of ***IDBI Trusteeship (Supra)***, the Hon’ble apex 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.

11. Coming to the case in hand, in the present case, the defence raised by the defendant is not one of mere denial. The defendant has disputed the very transaction of ₹4,50,000/- and has given an alternate version of the financial dealings between the parties, supported by details of specific online transactions allegedly made towards repayment of interest.

The defence regarding alleged misuse of blank signed documents, though ultimately a matter of evidence, cannot be brushed aside at this stage. Likewise, the contentions with respect to admissibility and validity of the promissory note raise legal issues which cannot be decided without trial.

12. Thus, it cannot be said that the defence is sham, moonshine, or illusory. The pleas raised by the defendant do disclose bona fide triable issues requiring adjudication after evidence. Hence, the defendant is entitled to unconditional leave to defend.

13. In view of the foregoing discussion, the application of the defendant filed under Order XXXVII Rule 3(5) CPC is allowed. The defendant is granted unconditional leave to defend the suit.

14. *Defendant is also directed to file WS within thirty days from today with an advance copy to the other side.* Application stands disposed off accordingly in the above said terms.

No observation made herein shall be treated as a finding on the merits of the claim or of any defence, and all contentions and documents relied upon by the parties shall be open for scrutiny at trial.

Announced in open Court
On 27.09.2025

(Ravinder Singh II)
DJ-04, North, Rohini Courts,
Delhi/27.09.2025