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CS DJ
639/19
SANJAY KUMAR
Vs.
HEMLATA

23.02.2024

Present : Sh. Sanjay Rana , Ld. Counsel for the plaintiff.
Sh.Kabir Ahmad , Ld. Counsel for the defendant through
VC.
Defendant in person.

1. Arguments heard on the application for leave to defend.
2. The plaintiff has filed the present case under Order 37 CPC stating that the defendant had requested him for a friendly loan. On her request, the plaintiff advanced a sum of Rs. 12 lacs to the defendant in September, 2016 in cash which the defendant undertook to return within six months. When the same was not returned and the plaintiff requested the defendant for its return, the defendant issued a cheque dt. 13.03.2017 in the favour of the plaintiff but the same was dishonoured on presentment with remarks "funds insufficient". Hence, the plaintiff filed the present suit.

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3. In the application, the defendant has stated that though she had approached the plaintiff for a loan, the same was not advanced by the plaintiff. Further, the defendant has not issued any cheque in the favour of the plaintiff. She had lost certain cheques and other documents. She also got registered an NCR with the Police in this regard. Hence, it is submitted that there are triable issues in the present matter. Hence, the application may be allowed and the defendant may be permitted to contest the case.

4. Ld. Counsel for the plaintiff submits that apart from the cheque, the defendant had also handed over the property documents of the property to the plaintiff as security. This fact could not be mentioned in the plaint as the same was informed by the plaintiff to the Ld. Counsel later on.

5. Record perused.

6. The impugned loan transaction is in cash. No agreement has been executed between the parties in this regard. The cheque in question is allegedly issued by the defendant on 13.03.2017. There are two connected matter before this court i.e. the present case and case titled as Sanjay Kumar Vs. Praveen Kumar. Sh. Praveen Kumar is the

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son of the present defendant. It is submitted on behalf of the plaintiff that on the same day, the defendant and her son handed over their property documents to the plaintiff. However, the defendant's son had got lodged an NCR regarding misplacement of some cheques and his property papers on 08.03.2017. The copy of the NCR is placed on record. This fact is specifically alleged by the defendant in his application. Hence, in the opinion of the court, there is a triable issue raised by the defendant. Hence, the application is allowed.

7. Defendant is directed to file his WS within 30 days with advance copy to the plaintiff.

Put up for further proceedings for **16.04.2024**.

(RUCHIKA SINGLA)
ADJ-03 (N/W)
Rohini Courts :Delhi/23.02.2024