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CS DJ ADJ 754/24

ARCHANA SHARMA Vs. SHIV KUMAR SHARMA

30.03.2026

**One of the Regular Stenographers is on paternity leave from 20.02.2026 till 03.04.2026.**

Present: Sh Akash Dahiya and Sh Kartik Joshi, Ld. Counsel for plaintiff alongwith plaintiff.

**Today the matter is fixed for clarifications, if any/order.**

Put up for orders at 4.00 pm.

(Abhitosh Pratap Singh Rathore)  
DJ-05 (SW)/Dwarka Courts  
New Delhi: 30.03.2026

At 4.00 pm

Present : None.

The present suit is filed by plaintiff through her SPA holder/husband namely Sh Ved Prakash for recovery of Rs. 7,00,000/-. As per the plaint, defendant is relative of plaintiff and in the month of December, 2018, defendant approached the plaintiff for a friendly loan of Rs. 7,00,000/- for development of his school and family needs. In good faith plaintiff granted the friendly loan of Rs. 7,00,000/- in cash after arrangement of funds during the period from January 2019 to May 2019 on different instances, for the period of one year. That the defendant had also taken loan from the husband of plaintiff who is SPA holder in the present suit and the said fact has also been acknowledged by defendant vide an agreement/affidavit.

After expiry of period of one year, plaintiff asked defendant to return the loan amount, but defendant started making lame excuses but later on defendant issued two post dated cheques bearing no. 004440 vide dated 31.08.2021 of Rs. 5,00,000/- drawn on Prathma Bank, Branch at Vill. Bhatpura, Block & PO Asmoli, Teh & Disst. -Sambhal, Uttar Pradesh and cheque bearing no. 153475 vide dated 31.08.2021 of Rs. 2,00,000/- drawn on State Bank of India, Branch at Naraina Industrial Area, Community Centre, Naraina Industrial, New Delhi to plaintiff. Defendant assured the plaintiff that the aforesaid cheques will be honored as and when presented in Bank for encashment. However, upon presentation, the cheques got dishonored and the return memo dated 02.09.2021 was received with remarks 'funds insufficient'. Thereafter, plaintiff issued a legal demand notice on 16.09.2021. Despite receipt of notice, defendant neither contacted the plaintiff nor made any payment. As defendant failed to make payment plaintiff was constrained to file the present suit. Summons for appearance were issued on 21.08.2024. Summons for judgment were issued on 23.05.2025. Leave to defend application was filed with a delay of 35 days which was condoned by this court.

In the leave to defend application it is stated that the suit is not maintainable Under Order 37 CPC, 1908. It is stated that plaintiff has failed to place anything on record to show that defendant had borrowed any money. Reply to leave to defend application was filed on 31.01.2026 by the plaintiff. In reply plaintiff stated that the application deserves dismissal as defendant has failed to demonstrate any substantial defence that would entitle him to leave to defend.

Arguments heard. Record Perused.

Perusal of plaint shows that suit has been filed on the basis of two cheques purportedly issued by defendant in the favour of plaintiff. Copy of

original cheques have been placed on record alongwith the copy of return memo. Originals are stated to be in the court record of Negotiable Instruments Act case. Cheque no. 004440 dated 31.08.2021 is issued for an amount of Rs. 5 lakhs and cheque dated 31.08.2021 bearing no. 153475 is issued for Rs. 2 lakhs. Cheque no. 004440 is dishonoured on the ground of insufficient funds. Another document placed on record is an undertaking given by the defendant whereby defendant acknowledged that he had obtained a loan of Rs. 42,75,500/- and he would re-pay it as soon as funds are arranged by him.

Law on summary suits and leave to defend has been clarified by Hon'ble Supreme Court of India in catena of judgments. Hon'ble Supreme Court of India in **IDBI Trusteeship Services Limited vs. Hubtown Limited, 2017(1) SCC 568** observed as following:

*“18. Accordingly, the principles stated in paragraph 8 of Mechelec’s case will now stand superseded, given the amendment of O.XXXVII R.3, and the binding decision of four judges in Milkhiram’s case, as follows:*

*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;*

*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;*

*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;*

*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.*

*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;*

*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.”*

In the application seeking leave to defend the main ground taken by defendant is that he has been acquitted in connected matter Under Section 138 N.I Act. The other ground which is pressed into service is that plaintiff has failed to place anything on record to show that defendant has borrowed any money from plaintiff. In the entire leave to defend application defendant has neither denied his signatures on cheques nor has denied the receipt cum undertaking dated 03.10.2019 which is signed by the defendant in the presence of two witnesses.

It is a settled position of law that the judgment passed by criminal court is not relevant for the purpose of imposing a civil liability. Defendant has neither denied his signature on cheques nor the factum of issuance of them. The undertaking whereby defendant had acknowledged the money received by him from the husband of the plaintiff and had also undertaken to repay the same has also not been denied. Plaintiff has relied upon the document to show that the cheque was issued in discharge of a liability. It is also pertinent to note that husband of plaintiff has been pursuing this matter as her SPA.

Defendant by way of his leave to defend application has failed to raise any triable question of fact in the present suit. Suit is based upon a written agreement and cheques, hence is squarely covered U/o 37 CPC, 1908. Issuance of cheque amounts to admission of liability and there is always a presumption that the cheque is issued in discharge of liability. Defendant by way of his leave to defend application has failed to show any ground that would hold even a vague chance of rebutting this presumption. There is no triable question involved in the present suit. Hence, this court finds no ground to entertain this application. The application is hereby **dismissed**.

The suit of the plaintiff is decreed for Rs. 7,00,000/- alongwith interest @ 6% p.a. from the date of filing till the satisfaction of the decree.

Cost of the suit is also awarded in favour of plaintiff.

File be consigned to Record Room after due compliance.

(Abhitosh Pratap Singh Rathore)  
DJ-05 (SW)/Dwarka Courts  
New Delhi: 30.03.2026