

20
CS DJ ADJ 619/21
MANISH KUMAR Vs. SHRIPAL THAKUR

13.05.2024

Present: Sh. Karamvir Dagar, Ld. Counsel for Plaintiff.
Sh. J.K. Dhingra, Ld. Counsel for Defendant.

Clarifications given on behalf of the parties on the application of leave to defend.

Put up for orders on the aforesaid application at 04:00 PM.

(DIVYANG THAKUR)
DJ-03/ SOUTH-WEST
DWARKA/ NEW DELHI
13.05.2024 (A)

At 04:00 PM

Present: None.

Vide this order, I would decide the application of the Defendant for unconditional leave to defend in this suit filed under the provisions of Order XXXVII of CPC by the plaintiff.

In brief, the allegations of the Plaintiff are that the Defendant had approached the Plaintiff in the month of January 2017 for a friendly loan of Rs. 6,50,000/- with a promise to pay back the entire loan within 1 ½ years i.e. by 30.06.2018 and after expiry of the same period, the Defendant had issued two cheques in favour of the Plaintiff; one bearing no. 000616 dated 01.11.2018 for an amount of Rs. 4,00,000/- and another bearing no. 150274 dated 03.11.2018 for an amount of Rs. 2,50,000/-. However, the same were dishonored due to insufficient funds and thereafter, the Plaintiff had issued a legal notice dated 16.11.2018 to the Defendant to which no reply was filed by the Defendant and thereafter, the Plaintiff had filed a criminal complaint under Section 138 of the N.I. Act and also filed the present suit for recovery of money under Order XXXVII of CPC.

Per contra, the case of the Defendant in the leave to defend is that the issues raised are triable in nature and the present suit is

abuse of the process of law and that the Plaintiff has not disclosed the true facts of the case. It is alleged by the Defendant that verification of the affidavit of summons for judgment is not according to Order XIX R 3(1) of CPC and that no cause of action arises against the Defendant. It is submitted on behalf of the Defendant in the leave to defend application that the Defendant used to run a committee in which Plaintiff was also one of the members and that the Plaintiff had taken the blank signed cheques from the Defendant as security and even after the receipt of the committee amount by the Plaintiff, the Plaintiff had not returned the said cheques to the Defendant and misused the same by presenting in his bank. It is further submitted by the Defendant that he had not issued the cheques in question to the Plaintiff at any point of time and that there is no document filed by the Plaintiff on record to show that the Defendant had availed the loan facility from the Plaintiff. It is further alleged that the suit of the Plaintiff is not maintainable in the eyes of law.

In reply to the leave to defend, the plaintiff has denied the averments of the Defendant in the leave to defend application and reiterated the contents of the plaint.

The Hon'ble Supreme Court in ***IDBI Trusteeship Services Ltd. v. Hubtown Ltd., (2017) 1 SCC 568 : AIR 2016 SC 5321*** has held as under:

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

a. 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;

b. 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;

c. 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;

d. 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.

e. 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;

f. 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.”

I have perused the record. The defendant has clearly denied the issuance of the cheques in question. His only defence is that the cheque was given as the security and that no friendly loan was availed by the Defendant from the Plaintiff. However, at the same time, the plaintiff has not disclosed the source of funds nor is there any written document to corroborate the claim that he advanced a friendly loan to the Defendant. Rather, in para 16 of the plaint, it is averred that the entire amount was transferred by the Plaintiff for purchase of mobile handset / phones in bulk from the Defendant which completely contradicts the earlier case set up by the Plaintiff himself. In such situation, it is not permissible to deny the leave to defend to the Defendant who should be given an opportunity to prove his

defence.

In light of the same and taking into consideration all the facts and circumstances, I find that it is a fit case where unconditional leave to defend can be granted. **Therefore, unconditional leave to defend is granted to the Defendant and application of leave to defend of the defendant, is allowed and disposed off accordingly.**

Defendant is hereby, directed to file WS within four weeks with advance copy to the opposite party and upon receiving of the same, Plaintiff shall file Replication within a further period of three weeks along with advance copy.

Put up on **11.07.2024** for completion of pleadings and framing of issues.

(DIVYANG THAKUR)
DJ-03/ SOUTH-WEST
DWARKA/ NEW DELHI
13.05.2024 (A)