

CS DJ 342/24
Samunder Singh Vs. Ajit Shokeen

14.07.2025

Present: Sh. Jai Prakash Sharma, Ld. Counsel for plaintiff
Sh Rohit Kumar, Ld Counsel for the defendant

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.

Arguments on the said application heard.

Put up for orders today itself at 4 PM.

(Ravinder Singh II)
DJ-04 (N), Rohini Courts
Delhi/14.07.2025

At 4 PM

Vide my present order I shall dispose of the application filed by the defendant under Order XXXVII Rule 3(5) of the Code of Civil Procedure (*hereinafter said as CPC*), seeking leave to defend the present summary suit.

Briefly stating the plaintiff has instituted the present suit under Order XXXVII CPC for recovery of Rs. 5,00,000/-, alleging that the said amount was advanced as a loan to the defendant, who, in discharge of his liability has issued the cheque in question. It is further averred by the plaintiff that the said cheque was dishonoured upon presentation on the ground ***“Drawer's Signatures Differ”*** and accordingly it is prayed that a decree in sum of Rs. 5,00,000/-be passed in favour of the plaintiff along with pendent lite and future interest.

The defendant vide the application under consideration has raised a threefold defence seeking leave to defend. *Firstly*, it is contended that the alleged amount of Rs. 5,00,000/- was paid in cash, which, even if admitted, is beyond the permissible limit of Rs. 2,00,000/- prescribed by the Income Tax Authorities, raising

serious doubts about the legality and enforceability of the alleged transaction. *Secondly*, the defendant submits that the cheque in question was dishonoured not for insufficiency of funds but because the drawer's signature was found to be different and the handwriting on the cheque in question pertaining to the payee's name and the amount is also different, thereby suggesting that the cheque might have been misused. It is further submitted that the plaintiff and defendant were colleagues at TPDDL and shared friendly relations, and the plaintiff has misused the blank signed cheque belonging to the defendant. *Thirdly*, the defendant has raised a plea regarding the financial incapacity of the plaintiff to advance such a substantial loan, thereby creating further doubt on the plaintiff's claim.

Per contra, the learned counsel for the plaintiff has vehemently opposed the application, submitting that the same is a misuse of process of law and that the defendant has failed to raise any substantial defence. It is argued that the cheque in question is a legally enforceable instrument under the Negotiable Instruments Act, and since the cheque has been dishonoured, the plaintiff is entitled to recover the said amount through the summary procedure provided under Order XXXVII CPC.

I have carefully considered the submissions of the Ld Counsel for the parties and have perused the entire record.

The Hon'ble Supreme Court in ***B.L. Kashyap and Sons Ltd. v. JMS Steels and Power Corporation & Anr.*** [2022 *LiveLaw (SC)* 59] has laid down that the grant of leave to defend is the rule and its denial is an exception. It has been held that where the defendant raises substantial defence, he is entitled to unconditional leave to defend. Even where the defence is not positively good but raises triable issues indicating a fair, bona fide or reasonable defence, the defendant is ordinarily entitled to unconditional leave to defend. It is only in cases where the defence is found to be frivolous or vexatious or where no genuine triable issues are raised that leave to defend is to be refused.

In the present case, the defence raised by the defendant, including the plea regarding the alleged cash transaction in violation of income tax limits, the question of misuse of the

cheque in view of the discrepancies in the signatures and handwriting, as well as the plaintiff's financial capacity, cannot be said to be sham, frivolous or vexatious at this stage. Further the stand of the defendant regarding dishonour of the cheque in question on the ground of ***"Drawer's Signatures Differ"*** also finds force and indeed raises a triable issues in the present case

The issues raised are matters of evidence and require adjudication in trial. Accordingly, in view of the law laid down by the Hon'ble Supreme Court and the facts of the present case, the application filed by the defendant under Order XXXVII Rule 3(5) CPC is, therefore, allowed. ***The defendant is granted unconditional leave to defend the suit.***

Application stand disposed of.

Now to come up for further proceedings on 16.10.2025.

(Ravinder Singh II)
DJ-04 (N), Rohini Courts
Delhi/14.07.2025