

**IN THE COURT OF SH KAPIL KUMAR, ADDITIONAL
DISTRICT JUDGE-01, NORTH EAST DISTRICT,
KARKARDOOMA COURTS, DELHI**

CS No. 271/2021

Sukhbir Singh
S/o Sh Ganga Prasad

.....Plaintiff

Vs.

1. Leelawati
W/o Sh Jagdish Prasad
2. Jagdish Parshad
S/o Sh Muktiyar Singh

....Defendants

ORDER

1. Vide this order, I intend to dispose off the application for leave to defend moved on behalf of defendants.

2. The case of the plaintiff is that he gave Rs 14 Lacs in cash to the defendants as a personal loan for which on 01.02.2019 the agreement for loan was executed along with the pro-note. It is stated by the plaintiff that defendants handed over two post dated cheques from the joint account of the defendants in the favour of the plaintiff for Rs 7 lacs each but those cheques got dishonored for the reason 'insufficient funds' when presented for payment. It stated that no payment was made and hence the present suit.

3. The application for leave to defend has been filed on behalf of defendants stating that the plaintiff is engaged in the business of money lending and previously also the money was borrowed by defendant no.2 on high rate of interest. It is stated defendant no.2 used to borrow money from the plaintiff at the rate of 7 % per month and defendant no.2 noted down some entries in the old diary kept by him. It is stated that on 22.02.2013 and 22.03.2013 defendant no.2 took two loans of Rs 50,000/- and Rs 1 Lac from the plaintiff on

interest at the rate of 7 % per month and thereafter paid total interest of Rs 10,500/- per month. It is stated that interest was paid up to 17.08.2013 and on 17.08.2013 defendant no.2 again borrowed Rs 5 Lacs from the plaintiff at the rate of 7 % per month. It is stated that plaintiff made various deductions from the loan against the interest part.

4. It is further stated on 24.10.2013 defendant no.2 return Rs 2,50,000/- from the plaintiff out of total Rs 5 Lacs, which was acknowledged by the plaintiff on the page of diary which is annexed with the application. It is stated that the plaintiff never lend any money as a friendly loan as alleged in the plaint.

5. Reply to the present application has been filed wherein it is stated that there is no triable issue as the loan agreement and the cheques in question bears the signature of defendants. It is denied by the plaintiff that he is engaged in the business of money lending. It is stated that the present application is liable to be dismissed.

6. I have heard arguments advanced by Ld Counsel for plaintiff and carefully perused the records.

7. In **Mechelec Engineers and Manufacturers vs Basic Equipments Co-corporation (1976) 4SCC 687**, the Hon'ble Supreme Court has laid down the guidelines for grant of leave to defend the suit : -

(i) if the defendant satisfied the Court that he has a good defence to the claim on merits, the defendant is entitled to unconditional leave to defend;

(ii) if the defendant raises a triable issue indicating that he has a fair or a bonafide or reasonable defence, although not a possible good defence, the defendant is entitled to unconditional leave to defend;

(iii) if the defendant discloses such facts as may be deemed

sufficient to entitle him to defend, i.e. if the affidavit discloses that at the trial he may be able to establish a defence to the plaintiff's claim, the Court may impose conditions being as to time of trial or mode of trial but not as to payment into Court or furnishing security;

(iv) if the defendant has no defence, or if the defence is sham or illusory or practically moonshine, defendant is not entitled to leave to defend;

(v) if the defendant has no defence or defence is illusory or sham or practically moonshine, the court may show mercy to the defendant by enabling him to try to prove a defence but at the same time protect the plaintiff imposing condition that amount claimed should be paid into court or otherwise.

8. Further in the judgment titled as **B.L Kashyap & Sons Limited vs J.M.S Steels and Power Corporation & Anr (2022) 3SCC 294** it was held by Hon'ble Apex Court that while dealing with an application seeking leave to defend it would not be correct approach to proceed as if denying leave is the rule or that leave to defend is to be granted only in exceptional cases or only in cases where defence would appear to be meritorious one. It was further held that if the defendant indicates that he has a fair or a reasonable defence, he is ordinarily entitle to unconditional leave to defend, unless there be any strong reason to deny leave. The Hon'ble Apex Court further held that if there remains reasonable doubt about the probability of defence, sterner or higher conditions could be imposed while granting leave to defend but denying leave would be ordinarily countenanced only in such cases where defendant fails to show any genuine triable issue and court finds defence(s) to be frivolous or vexatious.

9. This is the suit for recovery of Rs 14 Lacs filed by the plaintiff

in which he alleged that he gave Rs 14 Lacs in cash to the defendants. As per the plaint the plaintiff was a government employee. The source of money of cash of Rs 14 lacs has not been mentioned in the plaint. To the query of the court it is submitted by Ld Counsel for the plaintiff that no declaration in the ITR has been made as to the cash payment of Rs 14 Lacs. This fact in itself raises a triable issue.

10. The agreement for the loan as relied upon by the plaintiff is perused carefully. The loan agreement does not bears signatures of any witnesses. The column of witnesses is blank. The perusal of agreement for loan reveals that Rs 14 Lacs was given without interest for 11 months. The defendants are not the relatives or the family members of the plaintiff. This does not instill the faith of this court that such a big amount is given to a third person without interest. When this fact be considered in light of the photocopies of the diary filed along with the leave to defend allegedly bearing signatures of the plaintiff as per which there are several transactions between the parties as to the payment of interest, it is not believable that the loan was given without interest as a friendly loan. The photocopy of the diary containing the record of various money transactions, allegedly bearing signature of plaintiff, also raises triable issue.

11. In view of the above-discussion there are several triable issues in the present matter and accordingly the defendants are entitled to unconditional leave to defend the present suit. Accordingly unconditional leave to defend is hereby granted. The present application stands disposed off accordingly.

**Typed to the direct dictation and
announced in the open court
on this 5th January 2024**

**(Kapil Kumar)
ADJ-01, North-East
KKD Courts, Delhi**