

13.11.2025

Present: Ld. Counsel for plaintiff.
Ld. Counsel for defendant.

The present order shall dispose an application under Order XXXVII Rule 3 (5) CPC filed on behalf of the defendant seeking leave to defend the present summary suit filed by the plaintiff under Order XXXVII CPC.

Factual background : In nutshell, it is case of the plaintiff that he entered into a rent agreement dated 07.07.2021, property bearing no. 9784, 2nd floor Ahata Thakur Dass, Sarai Rohilla, Delhi to take the same on rent from the defendant. Perusal of the rent agreement would reveal that it was made on 07.07.2021 and was for a period of 11 months beginning from 07.07.2021 and Rs. 4,000/- was the monthly rent fixed by the parties. As per Para 4 of the rent agreement landlord i.e., defendant received a sum of Rs. 8,00,000/- from the tenant i.e., the plaintiff as security which is mentioned as refundable at the time of vacating the premises. This amount was given by way of three cheques details of which are mentioned in the agreement. It is grievance of the plaintiff that despite execution of the above rent agreement and also payment of security amount of Rs. 8,00,000/- as mentioned in the rent agreement, the defendant did not hand over the possession of the property neither refunded the amount of Rs. 8,00,000/- and it was only after plaintiff informed the defendant that he will file police

complaint against him, defendant issued three cheques for refund of Rs. 8,00,000/- which were, however, dishonoured and a complaint under Section 138 NI Act is stated to be pending. Plaintiff has filed the present suit under Order XXXVII CPC for recovery of the aforesaid amount of Rs. 8,00,000/-.

Defendant has sought leave to defend the above suit by moving an application dated 03.07.2024. In his application, defendant admits that plaintiff had approached him for taking the premises on rent but for residential purpose. It is also admitted by him that plaintiff took the tenanted premises on security basis for a sum of Rs. 8,00,000/- for a period of 11 months and further that rent agreement was registered before the Sub-Registrar. The defendant has further admitted that plaintiff issued three cheques bearing no. 397820 dated 10.07.2021 for Rs. 1,00,000/- Cheque no. 397821 dated 10.07.2021 for Rs. 1,00,000/- and cheque no. 397823 dated 08.07.2021 for Rs. 6,00,000/- all drawn on Canara Bank, Karol Bagh, New Delhi in his favour but as per the defendant, thereafter, the plaintiff took away one cheque of Rs. 1,00,000/- from the defendant by saying that he will pay the said amount of Rs. 1,00,000/- to the defendant; at the time of registration of the agreement; the defendant gave three cheques without sign and only mentioned amount in the said security cheque; the plaintiff promised the defendant at the time of vacation of the tenanted premises the plaintiff will return the security of the defendant. It is further the case of the defendant that he let out the property because money was required for running his business and further that the property was let out for residential purpose only. The application further mentions

that the two cheques for a sum of Rs. 6,00,000/- and Rs. 1,00,000/- were encashed by him but despite demands plaintiff did not pay Rs. 1,00,000/- in cash as promised by him and therefore, violated the terms of the agreement. Further, as per the defendant plaintiff also committed breach because his intent was to use the property for commercial purpose. Accordingly, defendant was not ready to keep the plaintiff as tenant and therefore, he asked the plaintiff that he will return the security amount of Rs. 7,00,000/- in installments. Further, as per the defendant, he regularly repaid the amount as agreed and only a sum of Rs. 75,000/- remains unpaid. Further, as per the defendant, he has told the plaintiff that remaining amount of Rs. 75,000/- shall be returned after plaintiff returns his cheques but plaintiff did not return the same on one or the other pretext and instead malafidely presented the cheques which were dishonoured. Hence, he may be given liberty to contest the suit.

I have heard both the parties and perused the record.

It is contention of the defendant that the cheques in question were given as security only. Further, it is contended that he required the amount for investment in business. As per Ld. Counsel for Defendant, it was in essence a loan transaction. Ld. Counsel for plaintiff has disputed this fact. It is contention of the plaintiff that cheques in question were given by the defendant for re-payment of the security amount. After going through the entire record and facts and circumstances of the case, this Court is of the opinion that there are several triable issues in the present case and the agreement between the parties does not appear, prima facie, a purely rent agreement and money that was exchanged as a security amount for

rent only. The question as to why plaintiff gave a sum of Rs. 8,00,000/- as security to the defendant and even entered into a rent agreement (which is a registered document) even without obtaining the possession can only be unraveled during the trial. Further, as per the rent agreement, the property carried rent of Rs. 4,000/- per month and tenancy period was only 11 months, however, it is again for the plaintiff to explain why he gave a security of huge sum of Rs. 8,00,000/- to occupy a premises for such a short period. Hence, in the opinion of this Court an opportunity should be granted to defendant to prove that the cheques in question were only given as a security for obtaining amount which was required by him to invest in his business and that rent agreement was a sham document. Further, defendant also ought to be given opportunity to prove the re-payment of substantial amount of the said amount. These facts and circumstances surrounding the transactions constrain this Court not to summarily dismiss the application of the defendant seeking leave to defend. Accordingly, the present application of the defendant seeking leave to defend is allowed subject to deposit of Rs. 1,50,000/- (One Lakh Fifty Thousand) in the Court by way of FDR.

Let WS be filed by the defendant within statutory period.

Be listed on **16.12.2025**.

(CHANDER MOHAN)
District Judge-14 (LAC)
Central, THC, Delhi/13.11.2025