IN THE COURT OF MS. MANU VEDWAN,
DISTRICT JUDGE-2, NORTH EAST DISTRICT,
KARKARDOOMA COURTS, DELHI

CS No. 221/2023

Subhash Chand Gupta …..**Plaintiff**

Versus

Deepa Gupta ….. **Defendant**

11.09.2024

ORDER ON APPLICATION MOVED ON BEHALF OF DEFENDANT.

1. Vide this order, I shall dispose of application moved on behalf of defendant for leave to defend the present suit.

2. This is a suit for recovery of rupees 3,30,708/- alongwith pendente lite and future interest @ 18% per annum. It is the case of plaintiff that the defendant had asked for a friendly loan of rupees 1,30,000/- from the plaintiff in the first week of June 2018. Plaintiff had then advanced the same to the defendant on 04.06.2018, without interest, through cheque, bearing number 738383, dated 04.06.2018, drawn on Syndicate Bank which was duly encashed by the

defendant in her bank account. It is further stated that at that time, defendant had also handed over the undated security cheque, bearing number, 158910, amounting to rupees 1,30,000/-, drawn on Central Bank of India, Ghonda, Delhi of her proprietorship firm, namely, Ambera Enterprises duly signed by the defendant. It is further stated that in the month of March 2019, defendant had again asked for a friendly loan of rupees 1,50,000/- from the plaintiff. Plaintiff had asked about the purpose and the defendant informed that the loan is for the payment of the instalments of the loan which the defenadnt had taken from the DCB bank. Plaintiff had stated that he would help the defendant, but the cheque, he would give directly in the name of bank for the amount due. Accordingly, on 08.03.2019, plaintiff had issued a cheque, bearing number 738391, dated 08.03.2019, drawn on Syndicate Bank amounting to rupees 1,45,708/- which was duly encashed in the loan account of the defendant in the DCB Bank. It is further stated that at that time also defendant had handed over the undated, cheque, bearing number, 216878, amounting to rupees 1,45,708/- drawn on Central Bank of India, Ghonda, Delhi of her proprietorship firm, namely, Ambera Enterprises duly signed by the defendant.

It is further stated that defendant had again asked for a friendly loan of rupees 35,000/- from plaintiff on 16.08.2019. Plaintiff had advanced the same to the defendant on 16.08.2019 without interest through cheque, bearing number, 496335, dated 16.08.2019, drawn on Syndicate Bank which was duly encashed by the defendant in her bank account. It is further stated that the defendant had again asked for a friendly loan of rupees 20,000/- from plaintiff, on 02.01.2020, and the plaintiff had advanced the same to defendant without interest through cheque bearing number 674332, dated 02.01.2020 drawn on Syndicate Bank. On being requested by the plaintiff, in the month of July 2020, defendant handed over two cheques, bearing number, 255951 amounting to rupees 20,000/- and cheque, bearing number, 255952 amounting to rupees 35,000/-, both drawn on Central Bank of India, Ghonda,Delhi of her proprietorship firm, namely, Ambera Enterprises duly signed by the defendant and requested that he would repay these loan amounts with the earlier loan amount of rupees 1,30,000/- and rupees 1,45,000/- and accordingly, plaintiff put the date of 01.08.2021 on the two cheques that is cheque, bearing number 255951 and cheque, bearing number 255952.

It is further stated that believing on the defendant's assurance that the abovestated four cheques would be honoured, plaintiff presented the abovesaid four cheques that are cheque bearing number 158910, cheque bearing number 216878, cheque bearing number 255951 and 255952, all dated 01.08.2021, all drawn on Central Bank of India, Ghonda, Delhi with his banker Canara Bank, but, all the four cheques were dishonoured with the remarks "Kindly contact Drawer/Drawee bank and please present again" vide cheque return memos, dated 05.08.2021. It is further stated that as per the return memos, plaintiff again presented the abovesaid four cheques with his banker Canara Bank, but, all the four cheques were dishonoured with the remarks "Funds Insufficient" vide cheque return memo dated 11.08.2021. It is further stated that the plaintiff had sent the legal notice, dated 11.08.2021, to the defendant. Despite that, defendant had failed to make the payment to the plaintiff. It is therefore requested that the defendant is liable to pay a sum of rupees 3,30,708/- alongwith pendente lite and future interest @ 18% per annum.

3. Defendant, on the other hand, had filed an application under Order XXXVII Rule 3(4) & (5) read with section 151 of Code of Civil Procedure seeking leave to defend in which it is stated by the defendant that the defendant has a strong case in her favour and the suit of plaintiff is liable to be dismissed on the ground that the plaintiff's suit is false. It is stated that the transaction between the plaintiff and the defendant were of commercial in nature as such, the present suit is not maintainable. It is also stated that the plaintiff is the neighbour of the defendant and used to work in the Ministry of Finance. Plaintiff had invested his money upto rupees 12,00,000/-in the business of defendant that is in the business of handicraft jewellery being the oral/dormant/sleeping partner of the defendant. It is further stated that the defendant never took any friendly from the plaintiff. It is further stated that defendant and her husband being the partner of the plaintiff supplied the handicraft jewellery to one Sh. Ashok Nagrath valuing the rupees 32,00,000/- to 33,00,000/-. However, due to some business dispute, plaintiff being the partner of defendant and her husband suggested her husband to file a Civil Suit bearing number 01/2016 for the recovery of rupees 32,00,000/-

against Sh. Ashok Nagrath as out of the aforesaid sum of rupees 32,00,000/-, a sum of rupees 12,00,000/- was invested by the plaintiff.

It is stated that the plaintiff in order to legalize his black money, had also given the cheques in question upto rupees 12,00,000/- to the defendant and on their clearance/credit in the account of defendant's husband, plaintiff immediately took back rupees 10,00,000/- in cash from the defendant and rest of the amount of rupees 2,00,000/- had distributed to the employees and labours of the plaintiff and defendant being the partners. It is further stated that the aforesaid Civil Suit titled as Pankaj Kumar Gupta vs. Ashok Nagrath is still pending before this Hon'ble Court. It is further stated that one Sh. Shakeel Ahmed had also illegally possessed/occupied the factory of defendant in connivance/conspiracy and at the instance of the present plaintiff. It is stated that in the garb of settlement/compromise, the plaintiff had also pressurized the defendant and her husband to give six cheques of rupees 50,000/- each to Sh. Shakeel Ahmed who filed a case under section 138 NI Act bearing CC No. 2514/2021 titled as Shakeel Ahmed vs. Pankaj Kumar Gupta & Anr, against the defendant and her husband which was dismissed. It is further stated that the plaintiff apart from the present suit had also filed a complaint case under section 138 NI Act on the basis of all cheques in question. It is further stated that the present suit is the abuse of process of law. It is further stated that the defendant had never borrowed any amount from the plaintiff instead plaintiff had invested in the business of defendant and plaintiff is now trying to misuse the cheques of the defendant. It is further stated that the present suit is not maintainable as the entire plaint is based upon the fabrication of the documents. The cheques in question are forged and fabricated.

4. Plaintiff has chosen to file reply to the application of defendant. In his reply, apart from reiterating the contents of plaint, the plaintiff has negated all the contentions of the defendant raised by her in her application. It is further stated that the application of defendant is based on false and fabricated facts and are not tenable in the eyes of law. It is stated that the defendant has no ground to defend the present suit and the present application is liable to be dismissed. It is specifically stated that the plaintiff had never invested any amount with the defendant and it is further stated that the plaintiff never became any type of partner with the defendant. It is further stated that the plaintiff had retired from the government job in January 2015 itself and the first loan in question was given by the plaintiff to the defendant on 04.06.2018 and thereafter on 08.03.2019, 16.08.2019 and 02.01.2020 that was almost after 3½ years of his his retirement and this clearly shows that the present defence taken by the defendant is just a false and frivolous one. It is further stated that that the plaintiff had no concern whatsoever with Sh. Ashok Nagrath or with the case titled as Pankaj Kumar Gupta vs. Ashok Nagrath. It is further stated that the plaintiff had never invested any amount with the defendant.

5. I have heard the arguments advanced on behalf of both the parties and have perused the documents filed on both sides.

6. Now, it is an acceptable legal principle that a leave to defend should not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put by him is frivolous or vexatious. The test whether leave to defend should be granted or not is to see whether the defence raises a real, honest and bonafide dispute and raises a triable issue or not. If the Court is satisfied that the defence has raised a triable issue or a fair dispute has arisen, leave to defend should not be refused. (Ref: *Raj Duggal* v *Ramesh Kumar*, 1991 Supp, (1) SCC 191). In the instant case, it is the defence of defendant that plaintiff is not forwarding the friendly loan to the defendant rather he is investing in the business of defendant. Apart from the cheques in question, no other document has been relied upon by the plaintiff to stress his position qua the forwarding of the alleged friendly loan. Despite opportunities given, plaintiff miserably failed to explain his financial status vis-a-vis the continuous advancements of money in lakhs made by him and now alleged to be the friendly loan to the defendant. All these facts have to be seen in light that the defendant had specifically stated that the plaintiff was more than a friend in these alleged transactions. It is also not explained/comprehensible that the same plaintiff is advancing the money to the defendant as well as her husband at

various stages. There are several triable issues which cannot be understood *prima facie* without leading relevant piece of evidence.

7. Therefore, in view of the above, the Court is convinced that defendant has disclosed facts constituting substantial defence and raised triable issue which necessitate further trial in the present suit. The grounds taken are sufficient to entitle defendant to defend the present suit unconditionally. The application for leave to defend the suit is therefore, allowed unconditionally.

8. The application is disposed off accordingly.

9. Nothing stated herein above shall amount to expression on merits of the case.

MANU VEDWAN
Digitally signed by MANU VEDWAN
Date: 2024.09.11 16:34:34 +0530

(Manu Vedwan)
District Judge-02/North-East,
KKD Courts, Delhi/11.09.2024