

IN THE COURT OF DISTRICT JUDGE
(COMMERCIAL COURT)-02, SOUTH WEST DISTRICT,
DWARKA COURTS, NEW DELHI

CS (COMM) 556/2023
CNR NO.: DLSW01-011951-2023

IN THE MATTER OF: -

Shyam Kumar
S/o Late Gauri Shankar Prasad
R/o House No. 73, Sonia Gandhi Camp,
Samalka, New Delhi - 110037.

. Plaintiff

Versus

Sh. Sachin Kumar
S/o Sh. Devraj
R/o 35, G.F., G6, Sector-11,
rohini, Sector-7, North West,
Delhi - 110085.

. Defendant

ORDER :-

1. Vide this order I shall decide an application under Order 37 Rule 3 (5) of CPC seeking leave to defend moved by the defendant.
2. Brief facts necessary for disposal of this application are that the plaintiff has filed the present suit under order XXXVII CPC for recovery of Rs. 10,00,000/- along with *pendente-lite* and future interest @ 24% per annum. It is averred that the

plaintiff was in the business of supplying transport vehicles for commercial purposes. The defendant had purchased 03 transport vehicles (buses) and made the payment against the said vehicles through cheques as per the following details :-

Cheque No. 00009 of Rs. 3,50,000/- dated 01.10.2022

Cheque No. 000010 of Rs. 2,00,000/- dated 20.10.2022

Cheque No. 000012 of Rs. 2,50,000/- dated 01.11.2022

Cheque No. 000013 of Rs. 2,00,000/- dated 01.12.2022

Cheque No. 000014 of Rs. 3,00,000/- dated 01.01.2023

Cheque No. 000015 of Rs. 3,00,000/- dated 01.02.2023

Cheque No. 000016 of Rs. 3,00,000/- dated 01.03.2023

Cheque No. 000017 of Rs. 10,00,000/- dated 31.03.2023

3. It is further averred that an amount of Rs. 10,00,000/- remained balance for which the defendant had issued Cheque No. 000017 of Rs. 10,00,000/- dated 31.03.2023 but the same got bounced when presented in the bank. When the defendant was approached, he assured the plaintiff to make the payment against the above said vehicles as per the agreement dated 27.09.2022. The plaintiff also requested the defendant to make the remaining payment and also to get the vehicles transferred in his name as per the mandatory requirement for plying of the bus till date the defendant failed to do so. The plaintiff lodged a complaint against the defendant on 24.04.2023 in PS Kapashera and also sent a legal notice dated 05.09.2023, but despite that the defendant has failed to make the payment of

Rs. 10,00,000/- to the plaintiff. Hence, the present suit.

4. Summons of the suit under Order XXXVII CPC was directed to be issued to the defendant. The defendant put in his appearance pursuant to service of summons. Thereafter, the defendant was served with the summons for judgment and consequently the defendant filed the present application seeking leave to defend the suit.
5. It is contended in the application that the defendant has no liability towards the plaintiff. It is stated that the defendant had purchased 03 buses from the plaintiff on 27.09.2022 for total consideration of Rs. 33,00,000/- and in respect of the same, the defendant had issued 08 post dated cheques in favour of the plaintiff and paid Rs. 24,18,000/- through cheques and cash transactions till 14.06.2023. After receipt of the payment, the plaintiff had returned 07 cheques to the defendant and only 01 cheque bearing No. 000017 of Rs. 10,00,000/- dated 31.03.2023 was retained by the plaintiff. It is further stated that at the time of delivery of the buses, the plaintiff assured the defendant to hand over the permit of Vehicle No. UP-17AT-0570, but the plaintiff did not hand over the permit of the said vehicle due to which the said vehicle was not passed by the concerned Transport Authority and the same was seized by STA department at Bulandshehar, UP. The officials of STA demanded Rs. 50,000/- to release the said vehicle to the defendant. It is further stated that the plaintiff had agreed to clear all pending challans and making insurance of the vehicles

but the plaintiff had neither cleared the pending challans nor got the insurance of the vehicles and the defendant found that huge challans of Rs. 4,00,000/- are pending towards the aforesaid vehicle due to which remaining 02 vehicles are lying unused with the defendant and for which the defendant has been paying the renal expenses. It is contended that the plaintiff has dishonest intention to cheat the defendant since inception and he breached the terms of the agreement and caused loss to the defendant. It is stated that the defendant has good defence and, therefore, it has been prayed that unconditional leave to defend the suit may be granted to the defendant.

6. The plaintiff has contested the application by filing reply thereto contending that the defendant has failed to disclose any substantial and plausible defence and the defence raised by the defendant is sham, illusory and does not disclose any triable issue. It is stated that the defendant has not denied the execution of agreement dated 27.09.2022, purchase of 03 buses, issuance of post dated cheques or his signature thereon. The plea of full and final payment is false and contradictory by the dishonour of Cheque No. 000017 of Rs. 10,00,000/- dated 31.03.2023. The allegation that a sum of Rs. 24,18,000/- is paid through cheque and cash is vague. The defendant has failed to disclose the dates, modes, amounts or proof of any alleged cash payment. The defendant has not filed any legally admissible acknowledgment discharging the liability of Rs. 10,00,000/-. The allegation relating to non handing over of permit, seizure of vehicle by STA, alleged demand of officials of STA of Rs

50000/- for release of said vehicle, pending challans towards the vehicles, insurance, rental expenses and alleged business losses are false and afterthought. The defendant has not produced any document to substantiate the aforesaid bald allegations. It is stated that the vehicles were delivered and remained under the possession and use of the defendant. It is further stated that defendant has failed to raise any triable issue and hence he is not entitled to leave to defend the suit. The plaintiff has prayed for dismissal of the application.

7. I have heard the Ld. Counsel for the plaintiff and perused the record. None came forward on behalf of the defendant to advance the arguments or to file the written arguments.
8. It may be noted that the defendant has stopped appearing in the court after filing leave to defend application. On 11.03.2025, the Ld. Counsel appearing for the defendant submitted that the defendant is not contacting him and there is no communication. He prayed to issue a court notice to the defendant. Accordingly, a court notice was directed to be issued to the defendant. The court notice issued to the defendant was received back with the report that premises were found locked. Thereafter, a fresh court notice was issued to the defendant and same was served upon the defendant by way of affixation, but despite service, the defendant chose not to appear and to argue and contest the leave to defend application.
9. From the pleadings of the parties, it is not in dispute that the plaintiff has sold 03 vehicles i.e. buses bearing Registration

No. UP 22 T 7882, UP 22 T 7881 and UP 17AT 0570 for a total consideration of Rs. 33,00,000/-. It is also not in dispute that both the parties have entered into agreement dated 27.09.2022 which is in the form of separate affidavits of both the parties in respect of each of the vehicle regarding sale and purchase. The same contains the details of the vehicle, total consideration amount, details of cheque issued towards the sale consideration by the defendant. Now, the plaintiff claims that the defendant had issued cheques as noted in para no. 02 of this Order towards payment of the vehicles, out of which one cheque bearing No. 000017 of Rs. 10,00,000/- dated 31.03.2023 towards the balance amount got dishonoured on presentation.

10. In support of its case, the plaintiff has filed the agreement dated 27.09.2022 which is in the form of affidavits of both the parties regarding sale and purchase of 03 vehicles, original cheque Cheque No. 000017 of Rs. 10,00,000/- dated 31.03.2023 issued by the defendant in favour of the plaintiff, returning memo dated 25.04.2023.
11. The defendant has contended in the leave to defend application that he had paid Rs. 24,18,000/- to the plaintiff through cheques and cash transaction till 14.06.2023. The defendant has also claimed that he had issued 08 posted dated cheques out of which the plaintiff returned 7 cheques and retained 01 cheque of Rs.10,00,000/- bearing Cheque No. 000017 of Rs. 10,00,000/- dated 31.03.2023. However, the defendant has not disclosed in leave to defend application that

how much amount was paid by way of cheque and how much amount was paid by cash. Even the dates have not been disclosed when the said alleged payments were made to the plaintiff. The defendant has only taken a vague and bald plea of making payment of Rs. 24,18,000/- to the plaintiff through cheques and cash transactions. In the absence of any details and the supporting documents, this plea of the defendant cannot be accepted.

12. The defendant has further contended that the plaintiff did not hand over the permit of the vehicle No. UP AT 0570 in terms of the agreement due to which the said vehicle was not passed by the concerned Transport Authority. Perusal of the agreement dated 27.09.2022 which is in the form of affidavit of the parties in respect of the vehicle No. UP AT 0570 shows that there is nothing to suggest that the plaintiff was supposed to provide the permit of the Vehicle No. UP AT 0570. As per the affidavit dated 27.09.2022 of the plaintiff, the plaintiff i.e. seller was responsible for any sort of dispute or litigation relating to the said vehicle such as HP, challan, finance, accident and Goods Tax, insurance etc. before 27.09.2022. It does not mention that the plaintiff was supposed to provide the permit of the said vehicle to the defendant.

13. The defendant has further alleged that there were huge pending challans for an amount of Rs. 4,00,000/- towards the vehicles, but the defendant has not placed on record any single copy of challan to show that the vehicles have pending challans

of Rs. 4,00,000/- before 27.09.2022. Therefore for this reason, the said plea is bald and rejected.

14. The pleas of the defendant of demand of officials of STA of Rs.50,000/- for release of vehicle or making insurance of 03 vehicles or business losses are unsubstantiated pleas. Though the defendant has filed the copy of WhastApp chats between the parties along with leave to defendant application showing that the defendant is asking the plaintiff to complete the documentation of the vehicles or else take back the vehicles and return the amount which has been disputed by the plaintiff to be his liability as per the agreement. However, the said Whats App chats will not raise any triable issue as the said demand made in WhatsApp chats by the defendant is beyond the terms of the Agreement dated 27.09.2022 between the parties and without any supporting document.

15. In view of the aforesaid discussion, I have no hesitation to hold that the defendant has failed to raise any triable issue. The defence raised by the defendant is vague, sham and illusory and liable to be rejected. Accordingly, leave to defend application moved by the defendant is dismissed

16. Consequently, suit of the plaintiff is decreed in his favour and against the defendant for a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only). The plaintiff is also entitled to interest on the said amount, however the interest claimed by the plaintiff @ 24% per annum appears to be on higher side and ends of justice will be met if the plaintiff is awarded *pendente-lite* and future

interest @ 9% per annum on the suit amount of Rs. 10,00,000/- from the date of filing of the suit till its realization. Cost of the suit is also awarded to the plaintiff.

17. Decree sheet be prepared accordingly,
18. File be consigned to Record room after due compliance.

**Announced in the open Court
on 20th April, 2026**

**(Balwant Rai Bansal)
District Judge (Commercial Court)-02
South-West District, Dwarka Courts,
New Delhi**