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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ RSA 124/2024, CM APPL. 41008/2024 (stay)

MANOJ KUMAR .....Appellant

Through: Mr. Jai Wadhwa and Mr. Ronak Karanpuria, Advocates.

versus

OM NARAYAN MEHROTRA @ OMI MEHROTRA .....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

O R D E R

% **19.05.2026**

1. Regular Second Appeal under Order XLII read with Section 100 of The Code Of Civil Procedure, 1908 *(hereinafter referred to as "CPC")* has been filed against the Order dated 22.04.2024, *whereby the learned District Judge, modified the Order of the learned ASCJ, dated 14.11.2018, by* ***setting aside*** *the conditions imposed, while granting Leave to Defend and granting unconditional Leave to the Respondent/Defendant to contest the Suit for Recovery* .

2. The *CS No.117/2017* was filed by the Appellant/Plaintiff Manoj Kumar under Order XXXVII CPC, for recovery of a sum of Rs.3 lakhs.

3. The **case of the Appellant/Plaintiff** was that he had given a friendly loan of Rs.3,00,000/- to the Respondent/Defendant, Om Narayan Mehrotra on 15.12.2014, against which the Respondent/Defendant had issued a cheque dated 17.05.2015 which, on presentation, was dishonoured with the remarks **"payment stopped by drawer"**.

4. A Legal Notice dated 30.05.2015 was served, after which the *Suit for Recovery of Rs.3,00,000/- under Order XXXVII CPC was filed.*

5. The Respondent/Defendant, Om Narayan Mehrotra @ Omi Mehrotra

filed his Leave to Defend Application, wherein he stated that he was introduced to the Appellant/Plaintiff, Manoj Kumar through Mr. Vishal Sabharwal. In January, 2014, the Appellant/Plaintiff, through Mr. Vishal Sabharwal, requested the Respondent/Defendant for a cheque of Rs.3,00,000/- to present before a third person, in connection with a property deal, assuring that it would not be misused. Trusting the relationship and Mr. Vishal Sabharwal's assurance, the Respondent/Defendant handed over a duly filled *undated* cheque of Rs.3,00,000/-, to the Appellant/Plaintiff.

6. Subsequently, family disputes arose between the Appellant/Plaintiff and Mr. Vishal Sabharwal and the Appellant/Plaintiff pressurized the Respondent/Defendant, to testify against Mr. Vishal Sabharwal, which the Respondent/Defendant refused.

7. On 24.11.2014, the Respondent/Defendant instructed his Banker *to stop the payment* against the cheque and also filed a Police Complaint against the Appellant/Plaintiff on 13.01.2015.

8. He also sent a Legal Notice through his counsel. The Respondent/Defendant, on these grounds, ***sought unconditional leave to defend the Suit in his Application dated 16.12.2017.***

9. The **learned Civil Judge, Delhi**, considered the rival contentions of the Appellant/Plaintiff Manoj Kumar and the Respondent/Defendant, Om Narayan Mehrotra @ Omi Mehrotra and *vide* Order dated 14.11.2018 observed that, considering the defence of the Respondent/Defendant, the loan story put forward by the Appellant/Plaintiff appeared to be highly improbable, but there were certain averments made by the Appellant/Plaintiff, which could not be overlooked.

10. The learned Civil Judge considered the averments made in the Plaint

regarding the loan having been advanced in the first week of December, 2014 and the cheque of Rs.3,00,000/- dated 17.05.2015 having been presented by the Appellant/Plaintiff, which was dishonoured on 19.05.2015. *Consequently, granted conditional Leave to Defend the Suit*, subject to the Respondent/Defendant furnishing a Bank Guarantee/FDR in the sum of Rs.1,50,000/- in the name of the Appellant/Plaintiff within 20 days.

11. *Aggrieved by the* ***conditional grant of Leave***, the Respondent/Defendant Om Narayan Mehrotra @ Omi Mehrotra preferred **RCA No.72/2019**, wherein the learned District Judge, having regard to the defence of the Respondent/Defendant and also considering that the request for stoppage of payment of the cheque in question was made by the Respondent/Defendant *vide* Letter dated 24.11.2014, *upheld the Order granting Leave to Defend, but set aside the condition imposed while granting the Leave.*

12. Aggrieved by the said Judgment, the Second Regular Appeal under Section 100 CPC, 1908, has been filed against the Order of the learned District Judge, against *removing the condition imposed by the learned Civil Judge, while granting Leave to Defend the Suit.*

13. The ***grounds of Appeal*** are that the impugned Judgment of the learned District Judge was erroneous, both on facts as well as in law. Order XXXVII CPC allows the Defendant to apply for Leave to Defend in a Summary Suit, which can be granted unconditionally or subject to conditions.

14. The learned Trial Court had considered the averments in the Plaint and had also considered the grounds taken in the Leave to Defend Application, while granting conditional Leave to Defend. The learned

District Judge did not take into consideration the fact that the defence taken by the Respondent/Defendant in his Leave to Defend Application, was highly improbable.

15. The learned Civil Judge had clearly held that there were triable issue**s** and therefore, conditional Leave was granted. It has not been appreciated by the learned District Judge that the impugned Order of the learned Civil Judge dated 14.11.2018, did not merit any interference.

16. Hence, the prayer was made that the impugned Order dated 22.04.2024 of the learned District Judge, *be modified and the condition imposed by the learned Civil Judge while granting Leave to Defend, be restored.*

Submissions heard and record perused.

17. The learned District Judge in the impugned Judgment dated 22.04.2024 observed that the case of the Appellant/Plaintiff, Manoj Kumar was that the loan was given on 15.12.2014, in *lieu* of which, a cheque dated 17.05.2015 in the sum of Rs.3,00,000/- had been issued by the Respondent/Defendant Om Narayan Mehrotra @ Omi Mehrotra, which, on presentation, got dishonoured.

18. The defence of the Respondent/Defendant Om Narayan Mehrotra @ Omi Mehrotra was that, on the assurance of one Mr. Vishal Sabharwal, he had given an undated cheque of Rs.3,00,000/- to the Appellant/Plaintiff Manoj Kumar on the pretext that the Appellant/Plaintiff needed the cheque to be shown in connection with a deal. This defence was corroborated by the fact that the Respondent/Defendant had written a Letter dated 24.11.2014, to his Bank, to stop the payment against the cheque.

19. In the light of this Letter and the payment against the cheque having

been stopped on 24.11.2014. The Plaintiff alleged that the loan was subsequently given on 15.12.2014, and the cheque dated 17.05.2015, was subsequently presented and dishonoured on 19.05.2015. *Prima facie*, the averments made in the Plaint became susceptible to proof by way of evidence and explanation about the Stop payment Letter being given on 24.11.2014, i.e. even before the loan was given, giving some credibility that Cheque was not given in discharge of a subsequently taken loan. Consequently, in the facts of the case, the discretion exercised by the Ld. District judge, in *setting aside* the condition imposed by the learned Civil Judge while *granting Leave, cannot be held to be arbitrary*.

20. It cannot be overlooked that this is a Regular Second Appeal and there is nothing to show that the discretion exercised was not justified, in the facts and circumstances of the case.

21. There is no substantial question of law raised in the present Appeal, justifying the re-imposition of the condition while granting Leave to Defend.

22. There is no merit in **the Appeal, which is hereby, dismissed**. **The pending Application are also disposed of, accordingly.**

NEENA BANSAL KRISHNA, J.

MAY 19, 2026/va/RS