



2024:DHC:8483



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

Reserved on: 23.08.2024
Pronounced on: 05.11.2024

+ **CS(OS) 232/2022**

AMARENDRA DHARI SINGH

.....Plaintiff

Through: Mr.Sudhir Nandrajog, Sr. Adv.
with Mr.Azmat H.Amanullah,
Ms.Oorjasvi Goswami, Advs.

versus

RAJSHREE SINGH

.....Defendant

Through: Mr.Gautam Narayan,
Ms.Asmita Singh, Mr.Aditya
Dewan, Mr.Sahil Chandra &
Mr.Parth Tiwari, Ms.Ananya
Singh, Advs.

+ **CS(OS) 233/2022**

AMARENDRA DHARI SINGH

.....Plaintiff

Through: Mr.Sudhir Nandrajog, Sr. Adv.
with Mr.Azmat H.Amanullah,
Ms.Oorjasvi Goswami, Advs.

versus

ARUNDHATI KHANNA

.....Defendant

Through: Mr.Gautam Narayan,
Ms.Asmita Singh, Mr.Aditya
Dewan, Mr.Sahil Chandra &
Mr.Parth Tiwari, Ms.Ananya
Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

I.A. 13989/2022 in CS(OS) 232/2022

1. This application has been filed by the plaintiff under Order XXXVII Rule 3(6) of the Code of Civil Procedure, 1908 (in short,



‘CPC’) praying for the judgment and decree to be passed in his favour as the defendant has failed to apply for leave to defend the Suit within the period prescribed in Order XXXVII Rule 3(5) of the CPC.

2. Subsequent to the filing of the present application, the defendant filed an application, being I.A. 16106/2022 under Order XXXVII Rule 3(5) of the CPC, seeking leave to defend the Suit. The defendant also filed I.A. 15990/2022 under Order XXXVII Rule 3(7) of the CPC, seeking condonation of delay in filing I.A. 16106/2022.

3. I.A. 15990/2022 was allowed by this Court *vide* its Order dated 02.08.2023, condoning the delay in filing of I.A. 16106/2022.

4. In view of the above developments, the present application has been rendered infructuous and is accordingly disposed of. It is however, clarified that the disposal of this application shall not in any manner prejudice the rights of the plaintiff in the Suit.

I.A.17444/2022 in CS(OS) 233/2022

5. This application has been filed by the defendant seeking condonation of delay in filing of the application under Order XXXVII Rule 3(5) of the CPC, being I.A. 17443/2022, seeking leave to defend the Suit.

6. For the reasons stated in the above application, and as the learned counsels for the parties have made detailed submissions on the merit of I.A. 17443/2022, the delay is condoned. The application is allowed.

I.A. 16106/2022 in CS(OS) 232/2022

I.A. 17443/2022 in CS(OS) 233/2022



7. These Suit(s) have been filed by the plaintiff under Order XXXVII of the CPC, praying for recovery of Rs.6,42,76,712.33 along with interest at the rate of 18% per annum [in CS(OS) 232/2022] and for recovery of Rs.8,81,91,452/- along with interest at the rate of 18% per annum [in CS(OS) 233/2022] against the respective defendant(s).

8. As these two Suits and the defence of the respective defendants raise identical issues, the present applications, which have been filed by the respective defendants seeking leave to defend the Suits, are taken up together for adjudication.

Case of the Plaintiff

9. It is the case of the plaintiff that Mrs.Rajshree Singh, the defendant in CS(OS) 232/2022, is his sister-in-law being related to him from his maternal side. She is the wife of late Mr.P.P.Singh and the mother of Mrs.Aditi Singh, who is the wife of Mr.Shivinder Mohan Singh of M/s Ranbaxy Group, and Mrs.Arundhati Khanna, who is the defendant in CS(OS) 233/2022, is his niece being related to his maternal side.

10. The plaintiff asserts that in the month of August 2020, Mrs.Rajshree Singh had approached him for a short-term loan citing financial difficulty. Based on the family relations between the plaintiff and the defendant, and in good faith, the plaintiff lent an amount of Rs.5 crores to Mrs.Rajshree Singh by way of two cheques, both dated 13.08.2020, for an amount of Rs.3 crores and Rs.2 crores, respectively.

11. The plaintiff asserts that it was agreed between Mrs.Rajshree



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Singh and the plaintiff that Mrs.Rajshree Singh shall repay the above amount to the plaintiff on his demand, and she handed over a signed cheque bearing no.000030 drawn on RBL Bank, Connaught Place Branch for an amount of Rs.5 crores to the plaintiff for the repayment of the loan.

12. The plaintiff asserts that he was also approached by the daughters of Mrs.Rajshree Singh, namely, Mrs.Arundhati Khanna (the defendant in CS(OS) 233/2022) and Mrs.Aditi Singh (the defendant in CS(OS) 243/2022) for short-term loans. The plaintiff asserts that based on the family relations and in good faith, the plaintiff lent Rs.6,90,00,000/- to Mrs.Arundhati Khanna by way of three cheques dated 28.08.2020 and 29.08.2020, and an amount of Rs.66,70,00,000/- to Mrs.Aditi Singh by way of cheques dated 20.01.2021, 26.02.2021, 12.04.2021 and 17.05.2021.

13. The plaintiff claims that the above loans were also short-term loans and were repayable on demand.

14. The plaintiff claims that for the repayment of the said loan, Mrs.Arundhati Khanna had also handed over a signed cheque bearing no.000629 drawn on Standard Chartered Bank, New Friends Colony for an amount of Rs.6,90,00,000/- to the plaintiff.

15. The plaintiff asserts that he demanded the repayment of the loan amounts on multiple occasions but each time the defendants sought time for repayment of the same. In view of the family relations, the plaintiff agreed to the defendants' requests to not encash the cheques given by the defendants to the plaintiff towards the repayment of the loan amounts.



16. The plaintiff makes a claim regarding another transaction of an Agreement to Sell of the property bearing H.No.10, Maulsari Avenue, Westend Greens, A F Rajkori, South West Delhi, New Delhi-110038, belonging to R.C. Nursery Private Limited, which he claims is controlled/managed by Mrs.Rajshree Singh, Mrs.Arundhati Khanna, and Mrs.Aditi Singh. The said transaction is not the subject matter of the present Suits and, therefore, is not discussed hereinafter.

17. The plaintiff asserts that on 24.12.2021, the plaintiff presented the cheque given by Mrs.Rajshree Singh for encashment, however, the same got dishonoured and was returned *vide* Return Memo dated 27.12.2021, with the remarks '*Insufficient Funds*'. The plaintiff, through his counsel, sent a Legal Notice dated 03.01.2022 under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act') to Mrs.Rajshree Singh, and also filed a complaint against her under Section 138 read with Section 142 of the NI Act, being CC No. 2657/2022 titled ***Amarendra Dhari Singh v. Rajshree Singh***, which is pending adjudication before the Court of the learned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi District, Delhi.

18. The plaintiff claims that as far as the cheque given by Mrs. Arundhati Khanna is concerned, the same was presented for encashment on 24.12.2021, and was also got dishonoured and returned *vide* Return Memo dated 27.12.2021, with the remarks '*Account Blocked*'. The plaintiff, therefore, through his counsel, issued a Legal Notice dated 31.12.2021 under Section 138 of the NI Act to Mrs.Arundhati Khanna, and thereafter, also filed a complaint against



her under Section 138 read with Section 142 of the NI Act, being CC No. 2670/2022 titled *Amarendra Dhari Singh v. Arundhati Khanna*, which is pending adjudication before the court of the learned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi District, Delhi.

19. The plaintiff, thereafter, filed the present two Suits claiming the amounts due from the respective defendants, along with interest at the rate of 18% per annum.

Submissions of the learned Counsel for the Defendants

20. The learned counsel for the defendants, in support of the applications seeking leave to defend the Suits, submits that while the defendants do not deny taking a loan from the plaintiff, who is the brother-in-law of Mrs.Rajshree Singh, and the uncle of Mrs.Arundhati Khanna, the said loan was repayable only when the defendants would be able to do so. The plaintiff had fixed no definite timelines within which the said loans were to be repaid to the plaintiff. He submits that the amounts received by the defendants were on account of love and affection, based on the cordial relations between the plaintiff and the defendants and their families.

21. He submits that the plaintiff had given the amounts to the defendants as a financial aid for Mrs.Aditi Singh, with a clear and unequivocal mutual understanding that the same would be repaid on an ‘*as and when able to*’ basis. The transaction was, therefore, between Mrs.Aditi Singh and the plaintiff only, though, the money was routed through the said defendants.

22. He submits that Mrs.Aditi Singh was a victim of extortion



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committed by a notorious conman, namely, Sukash Chandrashekhar, who, by impersonating as a high ranking official of the government and by misusing the name and image of such high ranking officer, had committed a continuous and sustained extortion against Mrs. Aditi Singh. He submits that after brainwashing her into thinking that she was communicating with authorities in the government, the conman had established trust and extorted money from Mrs. Aditi Singh and her family members. He submits that the same has also been reported in a press release dated 30.04.2022, issued by the Enforcement Directorate (in short, 'ED'). He submits that an FIR No. 208/2021 dated 07.08.2021 was also registered with the Special Cell, Delhi Police on the complaint filed by Mrs. Aditi Singh against such protracted extortion. Investigation in the FIR is being undertaken by the Economic Offences Wing, New Delhi (in short, 'EOW'). The ED is also investigating offences under the Prevention of Money Laundering Act, 2002 (in short, 'PMLA'). He submits that based on the FIR, the ED has already registered a case under the PMLA, and the EOW has also registered a chargesheet before the learned Special Judge.

23. The learned counsel for the defendants submits that in order to meet the unconscionable and exorbitant demands of the conman, Mrs. Aditi Singh had to liquidate every available asset and had to arrange money on an urgent basis. She was under extreme duress, fear, and pressure from the said conman to arrange for more money. It was only based on the family relations and under the impression that the plaintiff, who is her uncle, would act in good faith, that she



approached the plaintiff for short term financial aid. He submits that the plaintiff, at the time, portrayed himself to be a well-wisher of the family and stated that he had high regards for the father of Mrs.Aditi Singh, who happened to be his first cousin. He submits that the plaintiff offered the personal aid/financial help while knowing about the family's financial condition and pending litigations. He submits that the plaintiff voluntarily gave money to Mrs.Aditi Singh and the defendants herein.

24. The learned counsel for the defendants submits that the defendants were not the beneficiaries of the said amounts as the entire amount obtained from the plaintiff was transferred to the conman. The said money was given indirectly from the defendants to Mrs.Aditi Singh and by her to the conman. He submits that first the money was given directly by the plaintiff to Mrs.Aditi Singh, however, thereafter, on account of the ongoing litigations, the plaintiff was reluctant to provide money directly to her. He submits that the plaintiff himself suggested that the money should be transferred through other persons and, therefore, in August/September 2020, he transferred the money to the defendant, Mrs.Arundhati Khanna. He submits that the said amount was not based on any demand of the defendant, and it was the plaintiff who decided how much to transfer and to whom, on the basis of his own comfort.

25. He submits that since, at the time of availing the financial assistance from the plaintiff, Dr.Shivinder Mohan Singh, the husband of Mrs.Aditi Singh, was in judicial custody, there was an understanding between the plaintiff and Mrs.Aditi Singh that the



money that was given as financial aid would be returned only once Dr.Shivinder Mohan Singh would be released from jail and the pending litigations were resolved. He submits that the plaintiff, acting in sheer greed and malice has now sought to illegally recover the money that was voluntarily given by him as financial aid to the defendants with no fixed date for return. He submits that the Suits filed by the plaintiff are a clear afterthought and are not maintainable.

26. He submits that the plaintiff has concocted the letter dated 13.08.2020 to claim that the amount given by him to Mrs.Rajshree Singh was repayable on his demand. Similarly, a letter dated 29.08.2020 has also been concocted by him for the same purpose against Mrs.Arundhati Khanna. He submits that no documents evidencing the terms of repayment, such as the rate of interest or period of repayment, were discussed/agreed upon or reduced to writing. He submits that the defendants have never acknowledged, explicitly or implicitly, any obligations to repay the money on demand.

27. He further submits that in the WhatsApp messages exchanged between the parties, the plaintiff has asserted that the repayment had to begin from December 2020, however, it is the own case of the plaintiff that an amount of Rs.66.70 crores was extended to Mrs.Aditi Singh even in 2021. He submits that this clearly shows that the case set-up by the plaintiff that the amounts given to the defendants were repayable on demand, is false.

28. He submits that the message dated 20.10.2020 from the plaintiff, wherein he stated that he would provide his bank account



details only when the amount to be repaid is available with the defendants, shows that the amount was to be repaid by the defendants only when they would have been able to do so.

29. He submits that it is only by the letters dated 23.10.2021 sent to the two defendants, that the plaintiff for the first time demanded interest on the financial help that he had extended to the defendants.

30. He further submits that as far as the cheques allegedly given by the defendants to the plaintiff are concerned, the same were undated. It is the plaintiff who filled the dates in the said cheques. He submits that the same would amount to material alteration in the cheques, as provided under Section 87 of the NI Act. He submits that as there is no written agreement between the parties and as the Suits under Order XXXVII of the CPC have been filed by the plaintiff based only on these cheques, the defendants are entitled to the grant of unconditional leave to defend the Suits. In support, he places reliance on the Judgment of this Court in *Krishna Finhold Pvt. Ltd. v. Gupta & Co & Anr.*, 2004 SCC OnLine Del 458 and *BPDL Investments (Pvt) Ltd. v. Maple Leaf Trading International (P) Ltd.*, 2006 SCC OnLine Del 217. He submits that though the Judgment in *Maple Leaf Trading International (P) Ltd.* (supra) was doubted upon in *Ravi Chopra v. State & Anr.*, 2008 SCC OnLine Del 351, it was distinguished on the ground that *Maple Leaf Trading International (P) Ltd.* (supra) dealt with a case under Order XXXVII of the CPC, which is the present case as well.

31. Placing reliance on the Judgment of the Supreme Court in *B.L. Kashyap and Sons Limited v. JMS Steels and Power Corporation &*



Anr., (2022) 3 SCC 294, he submits that as the defendants have raised triable issues indicating a fair, *bona fide*, and reasonable defence, they are entitled to unconditional leave to defend the Suits.

Submissions of the learned senior counsel for the Plaintiff

32. On the other hand, the learned senior counsel for the plaintiff submits that it is admitted by the defendants that they have taken '*financial help*' from the plaintiff. It is not the case of the defendants that these amounts were not repayable to the plaintiff. In the absence of any stipulation on the date of repayment, the repayment would be on demand of the plaintiff.

33. He submits that in the application seeking leave to defend, the defendants themselves have pleaded three distinct dates when the amount taken by them would be repayable to the plaintiff. At one place, they state that it was a short term financial aid, while at another, they state that it was to be repaid when Dr.Shivinder Mohan Singh is released from prison, while in the letter dated 01.11.2021, Mrs.Arundhati Khanna states that she herself had suggested that she would return the money in three years' time. He submits that Dr.Shivinder Mohan Singh was released from prison more than one and a half years back, and the three years' period, as pleaded by Mrs.Arundhati Khanna, has also long expired. He submits that therefore, it is not a case where the defendants deserve the grant of leave to defend.

34. He submits that as far as the plea regarding the conman and the alleged extortion is concerned, the defendants in their applications admit that this fact was not told to the plaintiff when they had come to



the plaintiff to avail of the so-called financial help. The plaintiff, therefore, is not concerned with the same and his claim cannot be connected with the other litigations/complaints that have been filed in relation to the alleged transactions of Mrs. Aditi Singh with the said conman.

35. Placing reliance on the judgment of the Supreme Court in ***Sudin Dilip Talaulikar v. Polycap Wires Private Limited & Ors.***, (2019) 7 SCC 577, he submits that in the present case, even if it is presumed that the defendants have been able to make out a plausible case, leave must be granted only on the condition that the defendants deposit the amount claimed by the plaintiff, and not unconditionally.

36. As far as the reliance of the plaintiff on the letters dated 13.08.2020 and 29.08.2020 purportedly containing the stipulation of the amounts taken by the defendants being repayable on demand and with interest, the learned senior counsel submits that no claim is being made in the Suits on the basis of these letters and the plaintiff also gives up his claim for interest.

Analysis and Findings

37. I have considered the submissions made by the learned counsels for the parties.

38. Order XXXVII Rule 3(5) of the CPC provides for the defendant to apply for leave to defend the Suit. It further provides that the leave to defend may be granted to the defendant unconditionally or upon such terms that may appear to be just to the Court. It further provides that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that the



defendant has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous and vexatious. It further empowers the Court to direct the deposit of the admitted amount by the defendant, where the Court finds that a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him.

39. Considering the said provision, the Supreme Court in ***B.L. Kashyap*** (supra), summarized the principles applicable thereto as under:

“33. It is at once clear that even though in the case of IDBI Trusteeship, this Court has observed that the principles stated in paragraph 8 of Mechelec Engineers’ case shall stand superseded in the wake of amendment of Rule 3 of Order XXXVII but, on the core theme, the principles remain the same that grant of leave to defend (with or without conditions) is the ordinary rule; and denial of leave to defend is an exception. Putting it in other words, generally, the prayer for leave to defend is to be denied in such cases where the defendant has practically no defence and is unable to give out even a semblance of triable issues before the Court.

33.1. As noticed, if the defendant satisfies the Court that he has substantial defence, i.e., a defence which is likely to succeed, he is entitled to unconditional leave to defend. In the second eventuality, where the defendant raises triable issues indicating a fair or bonafide or reasonable defence, albeit not a positively good defence, he would be ordinarily entitled to unconditional leave to defend. In the third eventuality, where the defendant raises triable issues, but it remains doubtful if the defendant is raising the same in good faith or about genuineness of the issues, the Trial Court is expected to balance the



requirements of expeditious disposal of commercial causes on one hand and of not shutting out triable issues by unduly severe orders on the other. Therefore, the Trial Court may impose conditions both as to time or mode of trial as well as payment into the Court or furnishing security. In the fourth eventuality, where the proposed defence appear to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also of payment into the Court or furnishing security or both, which may extend to the entire principal sum together with just and requisite interest.

33.2. *Thus, it could be seen that in the case of substantial defence, the defendant is entitled to unconditional leave; and even in the case of a triable issue on a fair and reasonable defence, the defendant is ordinarily entitled to unconditional leave to defend. In case of doubts about the intent of the defendant or genuineness of the triable issues as also the probability of defence, the leave could yet be granted but while imposing conditions as to the time or mode of trial or payment or furnishing security. Thus, even in such cases of doubts or reservations, denial of leave to defend is not the rule; but appropriate conditions may be imposed while granting the leave. It is only in the case where the defendant is found to be having no substantial defence and/or raising no genuine triable issues coupled with the Court's view that the defence is frivolous or vexatious that the leave to defend is to be refused and the plaintiff is entitled to judgment forthwith. Of course, in the case where any part of the amount claimed by the plaintiff is admitted by the defendant, leave to defend is not to be granted unless the amount so admitted is deposited by the defendant in the Court.*

33.3. *Therefore, while dealing with an application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the rule or that the leave*



to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues, with the defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave. It gets perforce reiterated that even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated above could be imposed while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the defendant fails to show any genuine triable issue and the Court finds the defence to be frivolous or vexatious.”

40. From the above, it would be apparent that the denial of leave to defend is not the rule but an exception. However, leave to defend may not be granted where the defendant has practically no defence and is unable to give out even a semblance of triable issues. Where the defendant raises triable issues indicating a fair or *bona fide* or reasonable defence, albeit not a positively good defence, the defendant would still be ordinarily entitled to unconditional leave to defend. Where the defendant raises triable issues, but it remains doubtful if the defendant is raising the same in good faith or there is a doubt about the genuineness of the issues, the Court may impose conditions both as to time or mode of trial, as well as payment into the Court or furnishing of a security by the defendant. Where the defence appears to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also of the payment into the Court or furnishing security or both. It is only in the case where the defendant



is found to have no substantial defence and/or no genuine triable issues raised or where the Court finds the defence to be frivolous or vexatious, that the leave to defend is to be refused and the plaintiff is held entitled to a judgment forthwith. Where the defendant admits to a part of the claim of the plaintiff, leave to defend is not to be granted unless the amount so admitted is deposited by the defendant in the Court.

41. Applying the above principles to the facts of the present case, the defendants in both the Suits admit to have received money from the plaintiff, which the plaintiff claims was a loan while the defendants claim was a financial assistance. The defendants further admitted that the amount was not gratuitous inasmuch as it had to be refunded/repaid; it was not a gift which the defendants could retain with themselves and which was not repayable to the plaintiff. The only defence of the defendants is that the said amount was repayable on an '*as and when able to*' basis.

42. The defendants in their applications seeking leave to defend have also stated that the amount was repayable to the plaintiff when Mr. Shivinder Mohan Singh would be released from custody. The learned senior counsel for the plaintiff has asserted that the same also happened about one and a half years back.

43. In one of the letters, the defendant- Ms. Arundhati Khanna had stated that she would return the said amount in three years' time, which period has also lapsed.

44. The Court is, therefore, faced with the defence whereby the defendants admit that they are liable to repay the amount but claim



that the said amount has not become repayable as of now and shall become repayable on a future date, which is uncertain and at the sole discretion of the defendants and only when the defendants are able to repay the same.

45. In my view, this defence is completely moonshine and cannot be deemed to be sufficient to entitle the defendants to the grant of leave to defend. Once it is admitted that the amount is repayable, and there is no fixed time for repayment, the obligation of repayment cannot be at the sweet will of the debtor, but at the demand of the creditor. To hold it otherwise would, in fact, make it a gift, which, at the mercy and exclusive will of the debtor, may not be returned at all.

46. A clue in this regard can be received from the provisions of the Limitation Act, 1963 and specifically Articles 19 to 21 of the Schedule to the Limitation Act, which read as under:

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>19. For money payable for money lent.</i>	<i>Three years.</i>	<i>When the loan is made.</i>
<i>20. Like suit when the lender has given a cheque for the money.</i>	<i>Three years.</i>	<i>When the cheque is paid.</i>
<i>21. For money lent under an agreement that it shall be payable on demand.</i>	<i>Three years.</i>	<i>When the loan is made.</i>

47. A suit for the money lent can, therefore, only be filed within three years from the date the loan is made. Similarly, if the lender has given a cheque for the money, the suit can be filed within three years



from the date the cheque is paid. The provision does not provide for a default option for the defendant/borrower to decide when he will pay or be able to refund the said amount to the lender. Therefore, unless there is a contract to the contrary, which may even be oral, the amount is repayable upon the lender's demand.

48. In addition to the above, it is also admitted that the defendants had handed over cheques to the plaintiff for the repayment of the amount taken by them from the plaintiff. It is claimed that these cheques were undated. The defence put up by the defendants is that by inserting a date on these cheques, the plaintiff has in fact carried out a material alteration in the same, and in terms of Section 87 of NI Act, the said cheques are rendered void.

49. I do not find any merit in this defence of the defendants as well.

50. Section 87 of the NI Act reads as under :

“87. Effect of material alteration.—

Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee.—

And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

51. Interpreting the above provision, a learned Single Judge of this Court in ***Ravi Chopra*** (supra), has held as under:



“17. While it is correct that in terms of the above provision, any material alteration to a cheque without the consent of the drawer unless it is made to carry out the common intention of the original parties thereto renders the cheque void, the expression "material alteration" has not been defined. Significantly, Section 87 has been made subject to Sections 20, 49, 86 and 125 NI Act. These provisions help us to understand what are not considered 'material alterations' for the purpose of Section 87.

18. Section 20 NI Act talks of "inchoate stamped instruments" and states that if a person signs and delivers a paper stamped in accordance with the law and "either wholly blank or have written thereon an incomplete negotiable instrument" such person thereby gives prima facie authority to the holder thereof "to make or complete as the case may be upon it, a negotiable instrument for any amount specified therein and not exceeding the amount covered by the stamp." Section 49 permits the holder of a negotiable instrument endorsed in blank to fill up the said instrument "by writing upon the endorsement, a direction to pay any other person as endorsee and to complete the endorsement into a blank cheque, it makes it clear that by doing that the holder does not thereby incurred the responsibility of an endorser." Likewise Section 86 states that where the holder acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent has not been obtained to such acceptance would stand discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance. Section 125 NI Act permits the holder of an uncrossed cheque to cross it and that would not render the cheque invalid for the purposes of presentation for



payment. These provisions indicate that under the scheme of the NI Act an incomplete cheque which is subsequently filled up as to the name, date and amount is not rendered void only because it was so done after the cheque was signed and delivered to the holder in due course.

19. The above provisions have to be read together with Section 118 NI Act which sets out various presumptions as to negotiable instruments. The presumption is of consideration, as to date, as to time of acceptance, as to transfer, as to endorsement, as to stamp. The only exception to this is provided in proviso to Section 118 which reads as under:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

20. A collective reading of the above provisions shows that even under the scheme of the NI Act it is possible for the drawer of a cheque to give a blank cheque signed by him to the payee and consent either impliedly or expressly to the said cheque being filled up at a subsequent point in time and presented for payment by the drawee. There is no provision in the NI Act which either defines the difference in the handwriting or the ink pertaining to the material particulars filled up in comparison with the signature thereon as constituting a 'material alteration' for the purposes of Section 87 NI Act. What however is essential is that the cheque must have been signed by the drawer. If the signature is altered or does not tally with the normal signature of the maker, that would be a material alteration. Therefore as long as the



cheque has been signed by the drawer, the fact that the ink in which the name and figures are written or the date is filled up is different from the ink of the signature is not a material alteration for the purposes of Section 87 NI Act.”

(Emphasis supplied)

52. In **Bir Singh v. Mukesh Kumar**, (2019) 4 SCC 197, the Supreme Court, analysing the provisions of the NI Act, held as under:

“20. Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused. The presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from presumption of facts. Presumptions are rules of evidence and do not conflict with the presumption of innocence, which requires the prosecution to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law and presumptions of fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact as held in *Hiten P. Dalal* [*Hiten P. Dalal v. Bratindranath Banerjee*, (2001) 6 SCC 16 : 2001 SCC (Cri) 960].

33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be



attracted.

35. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of fiduciary relationship between the payee of the cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

53. It has, therefore, been held that by handing over a cheque, though signed but without a date, the drawer of the cheque is in fact giving an authority to the holder thereof to insert the date of his choice. Insertion of the date, therefore, will not make it a material alteration rendering the cheque void under Section 87 of the NI Act.

54. In the present case also, by handing over cheques which were signed by the defendants though were undated, to the plaintiff, the defendants, in fact, are deemed to have authorised the plaintiff to insert a date in the same and to present the cheques for encashment. The plea of the defendants that it was the defendants who were to inform the plaintiff of when the cheques could be presented would render the handing over of the cheques to the plaintiff nugatory and meaningless. Any such defence, therefore, cannot be accepted by this



Court.

55. In relation to the defence of a drawer of a cheque claiming that the cheque was given only as a security and therefore, proceedings under Section 138 of the NI Act cannot be initiated against such drawer, the Supreme Court in *Dashrathbhai Trikabhai Patel v. Hitesh Mahendrabhai Patel & Anr.*, (2023) 1 SCC 578, has held that as long as the drawee of the cheque is able to show that the drawer has a liability to pay to the drawee the amount of the cheque, proceedings under Section 138 of the NI Act shall be maintainable.

56. Reliance placed by the learned counsel for the defendants on the Judgment in *BPDL Investment Pvt. Ltd* (supra) cannot be accepted as the Court therein had found that two of the four cheques were stale and never presented. Though the Court, in addition, also observed that whether the alteration made in the cheque would render the same void or not, would be a matter of trial, in view of the subsequent development of law, and as held hereinabove, mere filling up of a date in an undated cheque is not a material alteration rendering the cheque void.

57. In *Krishna Finhold Pvt. Ltd.* (supra), this Court was confronted with the facts where the person who had signed the purported loan application was not impleaded as a party defendant in the suit. The Court also found other suspicious circumstances in the transaction. The Court also found that the terms of the loan were not immediately forthcoming and it could only be a matter of conjecture that a loan may have been given for a period of 5 or 10 years. It was in those peculiar facts that the Court found that the defendant has been able to



make out a case for grant of leave to defend. The said judgment also cannot support the case of the defendants in the facts of the present case.

58. In the present case, as is noted hereinabove, the liability to repay is admitted by the defendants. It is also admitted that they had given the cheques under their own signatures with the amounts filled in to the plaintiff, and the plaintiff has merely inserted a date on the said cheques. The said Judgment, therefore, cannot come to the aid of the defendants.

59. In view of the above, I find that the defence raised by the defendants is completely moonshine, frivolous and vexatious and, in fact, the defendants have admitted to their liability owed to the plaintiff.

60. Accordingly, the applications are hereby dismissed.

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61. The learned senior counsel for the plaintiff, during the course of his submissions had given up the claim of the plaintiff that the loan/amount given by the plaintiff to the defendants was to carry interest @18% per annum.

62. In view of the aforesaid discussion, CS(OS) 232/2022 is decreed in favour of the plaintiff and against the defendant in the said Suit, directing the defendant to pay an amount of Rs.6,42,76,712.33/- to the plaintiff. The plaintiff is also held entitled to the costs of the suit.

63. Similarly, CS(OS) 233/2022 is decreed in favour of the plaintiff



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and against the defendant in the said Suit, directing the defendant to pay an amount of Rs.8,81,91,452/- to the plaintiff. The plaintiff is also held entitled to the costs of the suit.

64. Let a decree sheet(s) be drawn accordingly.
65. The Suits stand disposed of in the above terms.

NAVIN CHAWLA, J

NOVEMBER 5, 2024/rv/RN/DG

Click here to check corrigendum, if any