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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 02<sup>nd</sup> July, 2025

+ CM(M) 3768/2024, CM APPL. 64761/2024 & CM APPL. 21097/2025

MS. NAINA HARPALANI

.....Petitioner

Through: Mr. Amit Garg, Ms. Mustafa Alam, Mr. Ankit Gupta, Mr. Dev Kumar and Mukesh Kumar Yadav, Advocates along with petitioner in person.

versus

RAVI KUMAR

.....Respondent

Through: Mr. Vivek Kr. Jain, Advocate (Through VC)

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**J U D G M E N T (oral)**

1. Petitioner, who is defending a summary suit, is aggrieved by dismissal of her application moved under Order XXXVII Rule 4 read with Section 151 CPC.
2. The grievance of the petitioner/defendant is, merely, limited to the effect that she was never served with *summons for judgment* and her oral acceptance in this regard before the learned Trial Court has no legal sanctity.
3. Admittedly, when the abovesaid summary suit was filed by the plaintiff, the defendant was duly served with the summons on 12.08.2022. Defendant even filed appearance before the learned Trial Court along with Vakalatnama of her counsel.
4. On 22.08.2022, the plaintiff had sought some time to apply for issuance of *summons for judgment* and the matter was thereafter adjourned for 17.10.2022. It was, again, adjourned as the plaintiff had not taken any step for issuance of *summons for judgment*.
5. When the matter was taken up by the learned Trial Court on 12.01.2023, the *summons for judgment* received unexecuted with the report that no such lady



was residing at the given address. The order sheet dated 12.01.2023 reads as under:-

*“Present: Sh. Rahul Baijal, ld counsel for plaintiff.*

*Summons for judgment sent to the defendant at the address furnished by the defendant by way of appearance are received with report of the process server that no such lady is residing at the address as stated by the neighbor. The summons have also been sent through post and the postal receipt is filed by the ld. Counsel for the plaintiff.*

*Let the delivery report be called from the postal department for 02.02.2023.”*

6. The controversy revolves around the proceeding which took place before the learned Trial Court on 02.02.2023 and, therefore, it will be appropriate to extract such order as well. It reads as under:-

*“Present: Ld counsel for the plaintiff.*

*Defendant in person with ld counsel.*

*PRI Prem Chand is present and report is filed which shows that article sent through post has been delivered on 25.11.2022 at the address.*

*The summons for judgment have been ordered to be issued on 01.12.2022 and have been issued by the Ahlmad on 06.12.2022. The service of the summons issued on 06.12.2022 is not possible on 25.11.2022. The counsel for the plaintiff stated that the copy of the application was sent by the plaintiff by post to the defendant and inadvertently the postal receipt was filed on the last date of hearing pertaining to that application.*

*Defendant is present in the court with her counsel Sh. Pankaj Dabas, who filed memo of appearance today with undertaking that vakalatnama will be filed in due course. The counsel appearing for the defendant prayed for supplying the copy of application for issuance of summons of judgment stating that the defendant is accepting the summons of judgment orally and will file leave to defend in the matter, Copy of the application is provided to the defendant. The defendant may take appropriate steps as per law.*

*Put up on 27.04.2023 for further proceedings.”*

7. It is, thus, quite clear that on said date, the defendant had appeared before the learned Trial Court along with her counsel. The counsel, himself, prayed to the learned Trial Court for supplying copy of application for issuance of



*summons for judgment* and made a statement before the learned Trial Court that defendant was accepting the same before the Court and it was also undertaken that she would file *leave to defend* in the matter. So much so, a copy of the application was also provided to the defendant then and there and defendant was asked to take appropriate steps as per law.

8. Merely because in the abovesaid order, it is mentioned that the summons were being accepted, orally, would not mean that there was no valid and legal service of *summons for judgment*.

9. There is also no reason, whatsoever, to disbelieve the judicial proceedings, more so when the counsel of the defendant had also appeared before the learned Trial Court and had himself made a request for supplying such *summons for judgment* and copy of the application.

10. Thus, the service of *summons for judgment* was complete on 02.02.2023 itself. In such a situation, *leave to defend* should have been filed within the prescribed period, reckoned from 02.02.2023.

11. The case was thereafter adjourned for 27.02.2023. The husband of defendant appeared before the learned Trial Court when the matter was taken up by the learned Trial Court at the time of the first call. However, when the matter was passed over at their request and was taken again, there was no appearance from the side of the defendant. The Court also noticed that no application seeking *leave to defend* had been filed and, therefore, considering the averments made in the suit, it passed a *decree* in favour of the plaintiff and against the defendant for a sum of Rs. 3.5 lacs with interest @ 18% per annum. The cost was also awarded and decree sheet was directed to be prepared accordingly.

12. It was only at the time of execution, application was moved by judgment-debtor/defendant under Order XXXVII Rule 4 read with Section 151 CPC seeking permission to file application seeking *leave to defend*.



13. In the entire such application, the defendant has not even whispered about any reason as to why she could not submit application seeking *leave to defend* within the permissible statutory period. In para 13 of her application, she has, simply, mentioned that the *summons for judgment* were verbally accepted by her counsel and time was sought to file *leave to defend*. Except for the above, there is nothing whatsoever in the application as to what prevented her from filing *leave to defend* within the prescribed period.

14. However, there is one more important aspect of the case which has not been appropriately appreciated by the learned Trial Court.

15. The cheques in question were never presented for encashment.

16. Since the cheques were never presented for encashment, for all purposes, these unutilized cheques had become stale cheques and, therefore, summary suit could not have been decreed, based on stale cheques, unless there was clear-cut additional material placed on record from the side of plaintiff.

17. In this regard, reference be made to *Ms. Deep Shikha @ Dolly Vs. Smt. Archana Jain: 2023 SCC OnLine Del 3555*.

18. In the aforesaid case, based on the cheques, which were dishonoured with the endorsement “instrument outdated/stale”, a summary suit was filed and when *leave to defend* was sought, it was declined and suit was decreed. Such grant of *leave to defend* and consequent decree were challenged before this Court by filing a *Regular First Appeal* and this Court observed that the summary suit could not have been decreed solely based on stale cheques unless it was supported with other evidence. Reference be made to relevant Paras i.e. Para 15 to 21 of said judgment which read as under: -

*15. This Court has heard rival contentions of the parties and has perused all the relevant documents and judgments relied upon by the learned counsels for the parties.*



16. *The Respondent initiated the suit for recovery under Order XXXVII CPC against the Appellant based on the subject cheque. The said cheque was returned unpaid by the bank with an endorsement 'instrument outdated/stale'. It is the contention of the Appellant that summary suit is not maintainable based on a stale cheque. It is thus important to examine the law regarding summary suits based on stale cheques.*

17. *The Hon'ble Division Bench of this Court in Baldev Singh v. Rare Fuel & Automobiles Technologies (P) Ltd., reported as 2005 SCC OnLine Del 406 examined an identical issue and inter alia, held as follows:*

*"5. The question posed is simply this. Can a cheque which is not presented for encashment within its validity period be made the basis of a suit under Order XXXVII of CPC? We feel that the answer must go in favor of the appellant. A mere issuance of a cheque, kept dormant, in say, a drawer, would not invest the drawee with a cause of action. The cause of action in such a case would arise only when the cheque, on presentation, is dishonoured or not encashed for any fault attributable to the drawer. The drawee cannot be allowed to complain when he himself allows the validity period to lapse rendering the same invalid. What was required of the respondent in this case was to present the cheque for encashment. However what happened is that the respondent sat over the cheque, did not present it for encashment and allowed the validity of the cheque to lapse. He has now made an issue which stems out of its masterly inactivity. Of course, the respondent has made an effort to cover its lapse. It has come up with a plea that it was only on the asking of the appellant that the cheque was never presented. We feel that even if it was on that account that the cheque was not presented still the fact remains that the basis of the suit is a cheque which remained un-presented. This, we further feel, takes away the shine from the suit and robs it of the cause of action under Order XXXVII CPC. This view that we have taken is also the view taken in two judgments emanating from this Court, AIR 2001 Del 341 Goyal Tax Fab. Pvt. Ltd. v. Anil Kapoor and (1983) 24 DLT (SN) 3 Suri and Suri Private Ltd. v. Ram Swarup Arora & Co. In both these judgments it was held that for filing a suit under Order XXXVII, it is necessary to present the cheque to the Bank. We approve both the aforesaid judgments holding that it lays down the law correctly."*

18. *Learned Single Judge of this Court in BPDF Investments (Pvt) Ltd. v. Maple Leaf Trading International (P) Ltd. reported as 2006 SCC OnLine Del 217 followed the same view and reiterated that the cheques which were*



*not presented for encashment during the validity period could not form basis of a suit under Order XXXVII CPC and the suit has to be tried as an ordinary suit.*

*19. Another learned Single Judge of this Court in First Lucre Partnership Co. v. Abhinandan Jain, reported as 2013 SCC OnLine Del 2819 even though followed the same principle, opined that the said view requires reconsideration. The relevant portion of the said Judgment, reads as follows:*

*“18. In view of the above pronouncements of this Court on the issue that a Suit under Order 37 CPC does not lie on a stale cheque, I would be bound by the said pronouncements. Though in my view the judgment may at proper stage require reconsideration as no reasons have been given in the said judgment as to why a cheque which is not presented for encashment to the bank, cannot be the basis of a Suit under Order 37 of the Civil Procedure Code specially keeping in view the provisions of Section 6 of the Negotiable Instruments Act, 1938 which holds that the cheque is a Bill of exchange. There are observations of the Hon'ble Supreme Court in the case of Shri. Ishar Alloy Steels Ltd. (supra) that when a cheque is not presented, the drawer may still be liable to pay the cheque amount in a civil action.”*

*20. It is pertinent to mention that in Lucre Partnership Co. (Supra), the defendant's case was not solely based on the stale cheque. In the said case, the stale cheques were supported with a written contract which clearly establishes the existence of a valid debt between the parties and the stale cheques were issued with an intention to clear the outstanding debt. Hence, the learned Single Judge rejected the application seeking leave to defend filed by the defendant therein. The said Judgment was challenged before this Court in RFA (OS) 50/2014, however, the said Appeal was disposed of by way of a compromise decree.*

*21. In view of the case laws discussed herein above, the legal position that emerges is that the summary suits cannot be decreed solely based on the stale cheques. However, if it is supported with other evidences, especially, written acknowledgments/promissory notes etc., the same may be decreed.”*

19. Learned counsel for respondent/plaintiff, during course of arguments, also admitted the fact that cheques in question were never presented for encashment and he, on instructions, therefore, submits that he would have no



objection if the decree is set aside and the suit in question is deemed to be treated as an *ordinary suit*. He, however, supplements that since there is already considerable delay in the present matter, learned Trial Court may be requested to dispose of the suit, as expeditiously as possible.

20. Transaction in question is of the year 2018 and the suit was filed in February, 2020.

21. Learned counsel for petitioner/defendant submits that he would render best assistance and co-operation in the matter and it would also be ensured that the written statement is filed without any delay.

22. Keeping in mind the overall facts of the case, submissions made by learned counsel for respondent/plaintiff today and the fact that summary suit in question has been decreed, primarily based on stale cheques, the present petition is allowed with the following directions: -

- (i) Judgment and decree dated 27.04.2023 and order dated 27.09.2024 are set aside. The execution i.e. Execution Petition NO. 170/2023, filed consequent to the aforesaid decree, shall also not, therefore, be pursued by the plaintiff as undertaken today.
- (ii) Suit in question, which was registered as Civil Suit No. 175/2020 is directed to be restored and is directed to be treated as *ordinary suit* in terms of the statement made by learned counsel for respondent.
- (iii) Petitioner/defendant shall file written statement before the learned Trial Court within four weeks from today.
- (iv) Learned Trial Court would give requisite priority to this matter and would make best endeavour to dispose of the suit, as expeditiously as possible.
- (v) Needless to say, both the sides would render requisite co-operation and assistance to the learned Trial Court to achieve such expeditious



disposal of the matter.

(vi) Parties are directed to appear before the learned Trial Court/ Successor Court on the date fixed i.e. 04.07.2025.

23. Pending applications stand disposed of in the aforesaid terms.

24. A copy of this order be given *dasti* under the signatures of the Court Master.

25. A copy of this order be also transmitted by the Registry to learned Trial Court for information and compliance.

**(MANOJ JAIN)**  
**JUDGE**

**JULY 2, 2025**/dr/ss/shs