IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Reserved on: 07th September 2026***

Pronounced on: 17th November, 2026

Uploaded on: 17th November, 2026

CNR No.: DLHC010431242021

\+ **RFA 94/2022**

MS. MILI SINGH
W/o Late Manish Singh
R/o House no 1681, 4th floor,
Govindpuri Extension, Kalkaji, New Delhi. .....Appellant
Through: Mr. Hem C. Vashisht, Ms. Neelam Sharma and Mr. Arslane, Advocates

versus

M/S. CELEBRATIONS,
Through Its Proprietor, Sh. Sumit Batra,
Shop No. 2, Mini Central Market,
DDA Flats, Kalkaji, New Delhi. ....Respondent
Through: Mr. Gourav Saini, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present ***Regular First Appeal*** under *Section 96 read with Order 43 Rule 1A* of Code of Civil Procedure, 1908 *(hereinafter referred to as 'CPC')* has been filed by the *Appellant/Defendant* against the Orders dated **28.11.2020,** whereby a conditional Leave to Defend was granted to the Defendant, subject to deposit of 50% of the principal amount; and Order

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dated **01.03.2021**, whereby the suit was decreed in favour of the Plaintiff for Rs.7,50,000/- along with costs, pendente-lite @ 9% per annum and future interest @ 6% per annum, on account of non- compliance of the condition precedent of the deposit of the amount to defend the Suit.

2. The Plaintiff/Respondent had filed a Suit bearing ***CS No. 57/2019*** for recovery of Rs 7,50,000/- along with pendent-lite and future interest @ 18% per annum, under Order XXXVII of CPC.

3. The ***facts in brief,*** as stated in the *Plaint*, was that the Plaintiff, M/s Celebrations was a sole proprietorship Firm of *Shri Sumit Batra*. In August 2017, the *Defendant/Ms. Mili Singh* came to the shop of the Plaintiff and informed that she is in the business of providing financial services and is running Portfolio Management Scheme, under which she collects money from small investors and invest the amount in shares of Blue Chip Companies, through Stock Market. The Defendant assured the minimum return of 10% per month, on the invested sum.

4. The Plaintiff gave *Rs.7,50,000/- in parts*, through banking channel and in cash from 22.08.2017 to 04.09.2017 to the Defendant, to invest in the Stock Market, under the Portfolio Management Scheme. The Defendant credited an amount of *Rs.75,000/-*to the account of the Plaintiff, as income for the month of September, 2017 on 21.09.2017, but thereafter, the Defendant never gave any income/dividend/profits, to the Plaintiff.

5. On Plaintiff's several requests to the Defendant to return back the money, the Defendant issued a cheque bearing no. **820783** dated **25.06.2018** for *Rs.7,50,000/-*, in the favour of Plaintiff. The aforesaid cheque, on

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presentation, was returned unpaid with remarks "*Funds Insufficient*", vide Cheque Return Memo dated **27.06.2018**.

6. The Plaintiff served a Legal Notice dated **11.07.2018** on the Defendant under Section 138 of the Negotiable Instruments Act *(hereinafter referred to as 'NIA')* for the payment of the amount, but the Defendant failed to make any payment. The Plaintiff then, filed a Complaint Case *CT No. 7277/18* under Section 138 NIA, against the Defendant.

7. *The Plaintiff, thus, filed Suit for the Recovery of Rs.7,50,000/- along with pendent-lite and future interest @ 18% per annum, under Order XXXVII of CPC.*

8. The Defendant filed an Application **for grant of Leave to Defend,** under **Order XXXVII Rule 3(5)**. The Defendant raised several grounds to contest the Suit. She took the objections that the Suit was not maintainable as the Plaintiff, was an unregistered proprietorship. Moreover, the Suit was filed in the name of proprietorship firm instead of the name of the proprietor, and no Application by way of amendment or to seek the rectification of title to sue in his own name, was filed by the Plaintiff. The Defendant further asserted that the Suit was pressure tactics of the Plaintiff to mould and pressurize the Defendants to accede to his illegal sexual advances. On refusal by the Defendant, the Plaintiff started blackmailing the Defendant.

9. Further, the Plaintiff neither filed the original documents on which it relied nor statement of Ledger Account on which the Suit under Order XXXVII CPC, was based.

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10. The *Suit was time barred* as the amount claimed is not specifically mentioned as to when and on which date first payment is paid and in which mode it had been paid.

11. The Defendant is not in business of providing any financial services or collecting money from the small investors. Unless the Plaintiff proves the said allegations, the Defendant was entitled to unconditional leave to defend.

12. *The Suit involves complicated question of facts as well as law which cannot be decided in the summary Suit or without allowing the parties to lead evidence and holding full fledge inquiry.* Further, no demand notice had been served on the Defendant.

13. ***On merits***, it was asserted that the Defendant was dealing in Dry Fruits supply to retailer shop. *Mr. Sumit Batra* was having his Archies shop in neighbourhood of residence of the Defendant. Due to both being neighbours and in business terms, *Mr. Sumit* and Defendant became family friends. *Mr. Sumit* knew that the Defendant is a widow and is also financially weak.

14. The Defendant approached *Mr. Sumit* in August 2017, asking for a friendly loan of *Rs.2,00,000*/-. *Mr. Sumit* consented for the loan of *Rs.1,50,000*/- and asked the Defendant to give him 5 cheques. The Defendant gave him 5 blank signed cheques and two blank signed papers, in good faith. On **22.08.17**, the Plaintiff had transferred an amount of Rs.500/- just to check whether the Defendant had received the amount or not. Thereafter, on the same day, Plaintiff transferred another amount of Rs.1,44,000/- in the account of the Defendant. The total of **Rs.1,44,500/-** *was given as personal loan to the Defendant.* The Defendant withdrew the

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money in parts on different dates, as was needed to lift her business. On 30.08.2017, the Defendant was left with Rs.68/- in her account.

15. On 02.09.18, *Mr. Sumit* told the Defendant that due to tax reasons, he wanted to use the Plaintiff's account for transferring some amount, which was allowed by the Defendant in good faith. On **04.09.2019**, the Plaintiff through RTGS transferred an amount of **Rs.3,00,000**/- in the account of Defendant, but by using blank cheque bearing no. **820781** of Defendant, Rs.3,00,000/- was withdrawn by *Mr. Sumit*, through his employee, by way of self-cheque (*which was one cheque out of 5 cheques, already taken as security for the loan of Rs.1,44,500/-*).

16. Thereafter, in discharge of liability of loan amount of Rs.1,44,500/-, the Defendant had made the following payments:-

- Between Sept. to November 2019 Rs.21,000/-
- Till Feburary,2018 Rs.21,000/-
- Cash upto March,2018 Rs.27,500/-

- Amount deposited in the bank account of Ms. Celebration on 29-09-2018 Rs.75,000/-

Total amount paid Rs.1,44,500/-.

17. The Defendant asserted that she had no money and never thought of doing any business of debentures, shares, stock market. Even she had no

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knowledge or experience in such business. The story of Plaintiff about payments of Rs.7,50,000/- was false, vague and concocted. *Mr. Sumit* was further bound to return the 3 cheques, which he has been illegally retained.

18. *Mr. Sumit* had misused the cheques by forging after filling drawee's name of M/s Celebrations and imaginary figure and presenting the cheque without intimating to the Defendant, which got dishonoured. Thereafter, he filed the false complaint under Section 138 NIA and the Suit for Recovery. *There was no legally enforceable liability against the Defendant.*

19. It was, therefore, submitted that the Suit of the Plaintiff be dismissed with exemplary cost.

20. The **learned *Trial Court***, observed that though Defendant had stated that five blank signed cheques given to the plaintiff as security, however, two of these cheques, are mentioned as 820783 & 820781. The perusal of bank statement of the Defendant, showed that cheque bearing no. 820779 & 820780 had been used and thereafter, cheque bearing no. 820785, 820786, 820787 and 820788 had also been used by Defendant. She had not stated anything about the cheque bearing no. 820782, 820783 and 820784.

21. Since this entire series except 820782, 820783, 820784 appears to had been used in the year 2017 itself, it becomes doubtful that cheque in question bearing *820783* would have been given by the Defendant to the Plaintiff in June, 2018 in order to discharge her liability towards the alleged payment of **Rs.7,50,000/-** for being invested in market. Even otherwise, there was only a credit entry of **Rs.3,00,000/-** and **Rs.1,44,500/-** in the bank statement of the Defendant. For the rest of the amount which was allegedly paid in cash, there was no document on record or receipt regarding the same.

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22. The *Additional District Judge* observed the Defendant had admitted that she had received Rs.1,44,500/- as a loan. She had been only able to show repayment of Rs.75,000/- only. Even if her version was taken to be a gospel truth, rest of amount does not stand paid. The bank account of the Defendant shows credit entries of Rs.4,44,500/- (Rs.1,44,500 + 3,00,000) from Plaintiff of which only Rs.75,000/- stand paid, if the plea of assured return was not taken into account. It was held that ***certain triable issues have been raised by the Defendant which requires the leading of evidence in order to adjudicate the suit fairly.***

23. The ***learned Trial Court***, *vide* Order dated **28.11.2020 granted a conditional leave to defend to the Defendant subject to deposit of 50% of the principal amount in the form of a FDR** with auto renewal clause, for a period of one year within four weeks.

24. After the Order dated **28.11.20**, the Defendant approached the legal service authority for free legal assistance. As she had no money, the compliance of the conditional Order **28.11.20** could not be made.

25. Consequently, the ***learned Trial Court*** *vide* Order dated **01.03.2021 decreed the suit of the Plaintiff** in the favor of Plaintiff for the sum of Rs. 7,50,000 along with cost, pendent-lite interest @ 9% per annum and future interest of 6% per annum. The Application filed by the Plaintiff under Order XXXVII Rule 3(6)(b) CPC was allowed.

26. Aggrieved by the Order of the *learned Trial Court* dated **28.11.20** and **01.03.2021**, ***the Defendant filed the present First Regular Appeal***.

27. The ***grounds of challenge*** are the Defendant had no money to pay 50% of the principal amount. Further, the loan amount was only

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Rs.1,45,000/- which had been already paid along with the interest. The learned *ADJ* in the Order dated **28.11.20,** failed to consider that the case involved complicated questions of facts and law which cannot be decided without evidence. The discretion applied while passing the conditional Order, was illegal.

28. It was asserted that there was *no privity of contract* which shows that the money was invested by the Plaintiff in portfolio business. No document was given by the Plaintiff to show that such business was done only by cheque/transfer of money to bank or such business was done by the Defendant, in the first place. The Defendant had a right to disprove the case, which was not possible if unconditional leave was not granted.

29. Further, the Defendant had been acquitted in the Complaint Case under Section 138 NIA bearing CT No. *7277/18* filed by the Plaintiff *vide* the order dated **29.07.20.**

30. Since there was an uncertainty as to the amount actually due, the Defendant was entitle to cross-examine the Plaintiff, which was not possible unless unconditional Leave to Defend was granted to the Defendant. The Defendant placed reliance on *Mrs. Raj Duggal vs Ramesh Kumar Bansal (AIR 1990 S.C. 2218).*

31. The Plaintiff had failed to show that Rs.7,50,000/-, was paid. Even if assuming that Rs.3,00,000/- was transferred, no evidence was placed for the remaining amount of Rs.4,50,000/-, which raises a triable issue.

32. The Plaintiff had not filed any document which shows that *Mr. Sumit Batra* was the proprietor of the Plaintiff and the Firm was not a legal entity and cannot sue in its own name. The Plaintiff had failed to file the original

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documents on which he relies for filing a Suit under Order XXXVII CPC. Neither Statement of Ledger Account nor original copies of document, have been filed along with the plaint. The Summary Suit on the basis of photocopies, is not maintainable.

33. The Defendant asserted that as per Income Tax Rule, payment more than Rs.20,000/- cannot be paid in cash, which makes the entire story of Plaintiff a manipulated, vague and an afterthought. In the present case, no income tax returns had been filed. The financial condition of the Plaintiff should be taken into consideration. Further, from the Statement ofAccount filed by the Plaintiff, it was clear that Plaintiff had no financial status to pay such a huge amount, to the Defendant.

Submissions heard and record perused.

34. The core question which arises for consideration is: *whether the Order dated **28.11.2020**, learned ADJ, granting conditional leave to defend to the Defendant subject to deposit of 50% of the principal amount, was justified, in the facts and circumstances of the present case*.

35. The principles governing the grant of Leave to Defend under Order XXXVII Rule 3(5) CPC, have been considered by the Supreme Court in *IDBI Trusteeship Services Ltd. v. Hubtown Ltd., (2017) 1 SCC 568*. It was held that where the Defendant raises triable issues indicating a fair or reasonable defense, the Defendant would ordinarily be entitled to unconditional leave to defend. However, where the Court entertains doubt regarding the good faith of the Defendant or the genuineness of the defense, it may impose appropriate conditions, including deposit of money or

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furnishing of security. *Such conditions, however, must not be unduly severe so as to shut out a genuine defense.*

36. The aforesaid principles were reiterated by the Supreme Court in *B.L. Kashyap and Sons Ltd. v. M/s JMS Steels and Power Corporation*, *(2022) 3 SCC 294*, wherein it was observed that grant of Leave to Defend, with or without conditions, is the ordinary rule, *whereas refusal of leave is an exception.* Even where a Defendant raises triable issues indicating a fair or reasonable defense, *unconditional leave ought ordinarily to be granted, unless there are strong reasons warranting the imposition of conditions.*

37. The Defendant, in her Application seeking Leave to Defend, disputed the very nature of the transaction pleaded by the Plaintiff. Her case was that she had approached the Plaintiff for a friendly loan and had received only **Rs.1,44,500/-,** through banking channels. It was further asserted that the subsequent transfer of **Rs.3,00,000/-** into her bank account, was made at the instance of the Plaintiff for his tax-related purposes and that the amount was thereafter, withdrawn by the Plaintiff through his employee by utilizing cheque No. **820781**. The Defendant also pleaded that five blank signed cheques, had been handed over as security and that the cheque in question was subsequently, misused by the Plaintiff.

38. It was further held by the *ADJ* that the only evidence available, was the oral statements. It was held that it is quite unnatural to believe that the Complainant without any proof, would be so gullible to believe the Accused that any investment can be made which assures 10% per month return along with return of the principal amount. Further, it is unnatural to believe that the Complainant who has given the amount to accused *via* bank transaction,

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will advance close to half the amount in cash and have no proof of cash transaction.

39. It emerges from Order dated **28.11.2020**, that substantive defense has been raised by the Appellant. The *ADJ* while granting leave to Defend had noted that the Statement of Account reflected credit entry of **Rs.3,00,000/-** and **Rs.1,44,500/-**in the bank, but the alleged loan given to the Appellant was **Rs.7,50,000/-. According to the Plaintiff, balance amount was paid in cash, which was a matter of evidence.**

40. Further, the averment was that the Defendant was dealing in financial services and was running Portfolio Management Scheme, but the Plaintiff filed a Complaint bearing ***CT No. 7277/18*** under Section 138 NIA against the Defendant, wherein Defendant was ***acquitted*** *vide* Order dated **29.07.2020**, wherein it was held that the Account Statement of the Accused/Defendant, **Ex. DW1/A**, shows no transaction to suggest that the Defendant was into financial services business or was dealing in shares, etc.

41. The Order arising out of the same transaction, is a relevant circumstance while examining whether the defence raised by the Defendant is bona fide and raises issues requiring trial.

42. The Court further held that on bare perusal of the cheque, there was two sets of handwriting. The cheque had been signed by the Accused, however, the rest of the particulars are in different style and handwriting. This supported the defense of the Accused that he handed over blank cheques to the Plaintiff.

43. The aforesaid circumstances, considered cumulatively, disclose disputes concerning the nature of the transaction, the alleged advancement

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of **Rs.7,50,000/-**, the purpose of the banking transfers, the alleged cash component, repayment of the amount received and the circumstances in which the cheque was handed over. These are not merely bald denials, but issues which go to the root of the Plaintiff's entitlement to recover the amount claimed.

44. It is therefore, held that substantial issued had been raised by the Defendant/Appellant in leave to defend Application, which were duly noted in Order **28.11.2020**, while granting Leave to Defend. Therefore, the condition of depositing 50% of the Suit Amount is hereby, set aside and Order dated **28.11.2020** is accordingly modified, and the Appellant is held entitled to unconditional Leave to Defend.

45. Once it is held that condition imposed was not sustainable, subsequent decree dated **01.03.2021**, purely on the ground of non-deposit of 50% of the Suit Amount and consequential dismissal of Leave to Defend Application, is patently not sustainable. Accordingly, impugned Order dated **01.03.2021** is also set aside.

Conclusion:

46. In the light of aforesaid discussion, **Leave to Defend allowed vide Order dated 28.11.2020, is held to be *an unconditional leave*.** The impugned Order dated **01.03.2021 decreeing the Suit,** is also set aside.

47. **The Appeal is allowed.** The parties are directed to appear before learned Judge, South-East District, Saket Courts, Delhi on 26.11.2026. The Defendant/Appellant shall file Written Statement within thirty (30) days thereafter, in accordance with law and the Suit be tried on merits.

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48. The Pending Applications are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 17, 2026/*R*

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