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**IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 17<sup>th</sup> May, 2024*

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**CS(COMM) 175/2020 and I.A. 4781/2024****AMANPREET KOHLI**

..... Plaintiff

Through: Ms. Supriya Juneja and Mr. Mohit  
Seth, Advocates (M-8457902716)

versus

**PANKAJ DAYAL**

..... Defendant

Through: Mr. Sudhir Nandrajog, Sr. Advocate  
With Mr. Amit Khanna, Ms. Gauri  
Puri, Mr, Rishabh Tehlan, Advs.**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present is a suit for recovery of a sum of Rs.4,21,00,000/- as principal amount and Rs.1.10 crores approximately as interest and further interest *pendente lite*. In the suit, an application under Order XIII A CPC seeking summary judgment was filed. This application was disposed of vide a detailed judgment dated 27th March, 2023. The relevant portions of the said judgment read as under:

*“26. In the present case, and as noted hereinabove, the plaintiff in his plaint has asserted that he is engaged in the business of Real Estate Development and Construction. The defendant is also engaged in the Real Estate business. It is alleged by the plaintiff that the loan was extended to the defendant by the plaintiff on the representation of the defendant that he required financial assistance to tide over his financial crises. The loan transaction is supported by the alleged loan Agreement, Receipt, Promissory Note and the post-dated cheques of the defendant, which would be*



*ordinary transaction of merchants and financiers. The loan carried interest and, therefore, was not a 'friendly loan'. The present suit has, therefore, been rightly filed by the plaintiff as raising a 'commercial dispute'.*

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*34. Applying the above test to the facts of the present case, the following considerations emerge for determining the present application:-*

*a) The plaintiff claims to have given a loan of Rs. 4,30,00,000/-Crores to the defendant in cash;*

*b) Though the Loan Agreement, Receipt, Promissory Note and the post-dated cheques are admittedly signed by the defendant, there are handwritten insertions in the same, which, the defendant claims, are not in his handwriting. At the same time, the Loan Agreement contains the assertion in a typed form that an amount of Rs. 4,30,00,000/- has been extended as a loan to the defendant and is to be repaid along with "lumpsum interest/profit of Rs. 20,00,000/- (Rupees Twenty Lakhs only)" ; the name of the bank from which the post-dated cheques have been issued is also in a typed form;*

*c) The defendant in his written statement has admitted to have taken a loan of around Rs.50-60 lakhs from the plaintiff between 2013-14 but claims to have returned substantial amount of the same, however, neither the details of such loan transaction nor of its repayment have been mentioned or substantiated, either in the written statement or through other documents;*

*d) The defendant alleges that the alleged Loan Agreement dated 01.09.2016 was forged over blank sheets of paper as the plaintiff used to take defendant's signatures on blank*



*documents/blank sheets of paper, blank cheques, etc., on the pretext of extending the period of another loan which was taken by the defendant. However, such defence from the defendant, who is admittedly a man of business, appears more fanciful than real. When and how these blank sheets of paper were given to the defendant by the plaintiff is also not mentioned. It is only a bald assertion without any details to support the same;*

*e) At the same time, there is a serious doubt on the alleged Memorandum of Equitable Mortgage dated 25.08.2016 and the Deed of Cancellation dated 11.10.2017, based on the Stamp of the Notary that these documents bear and the very nature of the transaction, wherein, again the amount is supposed to have been extended in cash by the uncle of the plaintiff to the father of the plaintiff, and thereafter, the Equitable Mortgage cancelled without mentioning any return of the said loan. The documents bear the stamp of the Notary, which on one page gives the expiry date of his license as 03.06.2019, while on the other page gives date of expiry of license as 03.06.2024;*

*f) Though, the learned counsel for the plaintiff is correct in his submission that a presumption under Section 118 read with Section 139 of the NI Act would arise of the cheques been issued for valid consideration, the same is rebuttable. In Kalamani Tex (supra), the Supreme Court held that a probable defence needs to be raised, which must meet the standard of “preponderance of probability”, and not mere possibility; a bare denial of passing of consideration would not aid the defendant. The stage of substantiating*



*the defence, however, is yet to arrive in the present case;*

*g) What is also important is that the alleged loan has been claimed by the plaintiff to have been given in cash to the defendant. Therefore, barring the documents in question, authenticity of which is disputed by the defendant, there is no other proof of such huge amount been extended as a loan by the plaintiff to the defendant.*

*35. In view of the above discussion, I find that while the defence raised by the defendant may succeed, however, it appears to be highly improbable to do so.*

***36. Accordingly, exercising powers under Rule 6(1)(b) read with Rule 7 of Order XIII A of the CPC, as applicable to “commercial dispute”, the defendant is directed to deposit a sum of Rs.4,50,00,000/- as was mentioned in the alleged Loan Agreement to be payable by the defendant, in Court, within a period of four weeks of this order, failing which the defence of the defendant shall stand closed and the plaintiff shall be entitled to a decree of the amount claimed. In case, the defendant deposits the amount in compliance with this order, the Registry is directed to invest it in an interest bearing fixed deposit for a period of one year with automatic renewal.”***

3. As can be seen from the above judgment, the Court directed the Defendant to deposit a sum of Rs.4.50 crores as a condition for raising its defence, in terms of Order XIII A Rule 7 CPC. This judgment came to be challenged before the Id. Division Bench in ***FAO(OS)(COMM) 85/2023***. The Id. Division Bench of this Court had dismissed the appeal vide order dated 18th January, 2024 as being not maintainable. The said order reads as under:



- “1. The appellant has filed the present appeal impugning an order dated 27.03.2023 passed by the learned Single Judge under Order XIII A of the Code of Civil Procedure, 1908 (hereafter ‘the CPC’) directing the appellant to deposit a sum of ₹ 4,50,00,000/- within a period of four weeks failing which, the appellant’s defence would stand closed.*
- 2. The learned counsel appearing for the respondent submits that the present appeal is not maintainable as the impugned order does not lie in terms of the Order XLIII Rule 1 of the CPC. She further submits that, thus, in terms of Section 13 of the Commercial Courts Act, 2015, the present appeal would not be maintainable. She also referred to the decision of the Hon’ble Supreme Court in *Kandla Export Corporation & Anr. v. OCI Corporation & Anr.*: (2018) 14 SCC 715, as well as the decision of this Court in *Odeon Builders Pvt. Ltd. Vs. NBCC (India) Ltd.*: 2021 SCC OnLine Del 4390.*
- 3. The said contention is merited. The present appeal is not maintainable and is, accordingly,, dismissed. Pending applications, if any, also stand disposed of.”*
4. Pursuant to the order of the Id. Division Bench, the Defendant challenged the judgment dated 27th March, 2023 before the Supreme Court in *SLP(Civil) 4651/2024* titled *Pankaj Dayal v. Amanpreet Singh Kohli*. Vide order dated 19th April, 2024, the Supreme Court disposed of the SLP in the following terms:
- “1. Application seeking exemption from filing certified copy of the impugned judgment is allowed.*
- 2. Delay condoned.*
- 3. Vide order dated 1st March, 2024, the parties were referred to the Delhi High Court Mediation and Conciliation Centre. Learned counsel for the parties informs us today that a settlement could not be worked*



out.

4 . *The petitioner-defendant in CS(Comm.) No. 175/2020 is aggrieved by an order dated 27th March, 2023 passed by the learned Single Judge of the High Court of Delhi on an application moved by the respondent plaintiff under Order XIII A of the Code of Civil Procedure, 1908 whereunder, exercising powers under Rule 6(1)(b) read with Rule 7 of Order XIII A of the C.P.C, the petitioner-defendant has been directed to deposit a sum of ₹4.5 Crore, as mentioned in the purported Loan Agreement executed between the parties, which amount includes a sum of ₹4.3 Crore towards the principal as stated by learned counsel for the respondent-plaintiff and disputed by the other side.*

5. *Having heard learned counsel for the parties, we are of the opinion that interest of justice would be served if **instead of directing the petitioner-defendant to deposit a sum of ₹4.5 Crore, he be directed to deposit a sum of ₹2.5 Crore in the High Court as a condition precedent for contesting the Commercial Suit instituted by the respondent-plaintiff.***

6. At the request of learned counsel for the petitioner-defendant who seeks instalments, the aforesaid amount shall be deposited by the petitioner defendant in the following manner:

(i) 1st instalment of ₹50,00,000/- (Rupees Fifty Lakhs only) within two weeks from today.

(ii) 2nd instalment of ₹1,00,00,000/- (Rupees One Crore only) within four weeks from today.

(iii) 3rd and last instalment of ₹1,00,00,000/- (Rupees One Crore only) within six weeks from today .

7. *In case the petitioner defaults in depositing the instalments as directed above, the respondent-plaintiff shall be entitled to approach the learned Single Judge for appropriate orders in terms of paragraph 36 of the impugned judgment.*



*8. The Petition for Special Leave to Appeal is disposed of on the above terms.”*

5. As can be seen from the order of the Supreme Court, the amount of Rs.4.5 crores was modified to Rs.2.50 crores and the same was to be deposited by way of instalments by the Defendant with the Worthy Registrar General of this Court. However, the admitted position today is that no amount has been deposited by the Defendant. The Supreme Court also directed clearly that if the Defendant defaults in depositing the instalments, the consequences in terms of paragraph 36 of the order would follow and the Plaintiff was free to approach this Court for passing of appropriate orders.

6. Today, the matter is listed for passing of appropriate orders in terms of paragraph 7 of the order of the Supreme Court. The submission on behalf of the Plaintiff is that the Defendant having not adhered to the mandate directed by the Supreme Court, judgment deserves to be pronounced and a decree ought to be passed in terms of paragraph 36. It is the submission of Id. Counsel for the Plaintiff that in fact the consequence of a conditional order under Order XIII A would be that the judgment is an automatic consequence and only a decree would have to be drawn up by the Court.

7. On the other hand, Id. Senior Counsel appearing for the Defendant has made the following submissions:

- i) That the Defendant had filed an application for modification of the order dated 19th April, 2024 before the Supreme Court on 29th April, 2024. However, the same was rejected by the Registrar of the Supreme Court vide his order dated 3rd May, 2024.
- ii) Secondly, an application for review has now been filed on 8th May, 2024 before the Supreme Court.



iii) Thirdly it is argued that the consequence of non-deposit would only be that there would be no defence but the Plaintiff would be required to prove his case and the Defendant would be entitled to cross-examine the Plaintiff's witnesses.

iv) It is submitted that the suit itself is barred by Section 3 of the Punjab Registration of Money Lenders Act, 1938 as the Plaintiff does not have a registration as a money lender under the said Act. He further submitted that the Court in paragraph 26 of the order dated 27th March, 2023 having held the dispute to be a commercial dispute and not having termed the loan as a 'friendly loan', the suit would be barred.

v) Lastly, it is also submitted that the Defendant has filed two applications i.e. one under Order VII Rule 11 CPC seeking rejection of the plaint and second under Section 340 of Cr.PC for appropriate action against the Plaintiff for filing forged documents.

8. The Court has heard the Id. Counsels for the parties.

9. Insofar as the order dated 19th April, 2024 of the Supreme Court is concerned, the same brooks no ambiguity. It is clear and categorical to the effect that if there is default in depositing the instalments to the tune of Rs.2.5 crores, the Plaintiff shall be entitled to approach this Court for appropriate orders in terms of the paragraph 36 of the judgment.

10. The Defendant filed an application for modification of the said order which was also rejected by the Registrar of the Supreme Court on 3rd May, 2024 with the following observations:

*“4. A bare perusal of the aforesaid orders shows that the mandate of the orders is conspicuous while*





*directing the petitioner to conditionally deposit money. The amount of the money to be deposited has been reduced by the Hon'ble Court and the same has been directed to be deposited in installments. It appears that by way of miscellaneous application the petitioner intends to gain time by seeking clarification which are not necessitated and are under the ambit of seeking review. The judgment dated 27.03.2023 passed by the Hon'ble High Court has elaborately dealt with the matter and this Hon'ble Court has been pleased to modify the judgment passed by the High Court. The ratio of law laid down in the judgment and order of the High Court and this Hon'ble Court are in consonance except to the reduction in the amount to be conditionally deposited by the petitioner to contest the suit. There is no error apparent on the face of the record that warrants clarification. Under the name of Miscellaneous Application, Review is not maintainable. The same ratio of law has been reiterated in M.A. No.1572 of 2021 titled as "Supertech Ltd. Versus Emerald Court Owner Resident Welfare Association and Ors. passed on 04.10.2021 wherein this Hon'ble Court has been pleased to lay down the ratio of law as follows:*

*“12. The hallmark of a judicial pronouncement is its stability and finality. Judicial verdicts are not like sand dunes which are subject to the vagaries of wind and weather. A disturbing trend has emerged in this court of repeated applications, styled as Miscellaneous Applications, being filed after a final judgment has been pronounced. Such a practice has no legal foundation and must be firmly discouraged. It reduces litigation to a gambit. Miscellaneous Applications are becoming a preferred course to those with resources to pursue strategies to avoid compliance with judicial decisions. A*



*judicial pronouncement cannot be subject to modification once the judgment has been pronounced, by filing a miscellaneous application. Filing of a miscellaneous application seeking modification/clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly [‘Quando aliquid prohibetur ex directo, prohibetur et per obliquum’].”*

5. *Apparently, what transpires is that the applicant, under the garb of miscellaneous application is seeking review of the order dated 19.04.2024 by circumventing the procedure which is impermissible in law. The via media adopted by the petitioner of filing the miscellaneous application on the above-mentioned ground is not sustainable.*

6. *Therefore, in view of the said aspect as discussed above and in light of the reconsideration of the registration of the present matter, I am of the considered view that this is a fit case which attracts Order XV Rule 5 of the Supreme Court Rules, 2013, and entails non-registration. Accordingly, I hereby, hold that the registration of the present case was not proper and by virtue of Order XV Rule 5 of the Supreme Court Rules, 2013, I hereby, decline to receive the same.*

7. *Ordered accordingly.”*

11. Thus, the modification application itself has not been received by the Supreme Court.

12. Coming to the issue of the suit being barred under Section 3 of the Punjab Registration of Money Lenders Act, 1938, the said Act would be applicable only in respect of money lenders who are in the *business* of advancing loans as defined under the Act. The Plaintiff admittedly, as



recorded in the order dated 27th March, 2023, is stated to be in the real estate business and is not in the business of lending money. A one-time commercial transaction between the parties would not convert the Plaintiff into a money lender. Under such circumstances, this Court is of the opinion that the said Act would not even be applicable in the present case.

13. Moreover, this objection could at best have been taken at the stage when the Order XIII A CPC application was being heard and opposed the grant of any relief at that stage. The said objection having not been pressed and not recorded in the said order, at this stage, it is too belated for the Defendant to raise this objection.

14. The application under Order 7 Rule 11 CPC which is stated to have now been filed by the Defendant is also extremely belated as the order dated 27th March, 2023 has been passed almost one year and three months ago and today, the Defendant cannot argue that the suit itself is not maintainable. Any objections that the Defendant wanted to take ought to have been taken at the appropriate stage including the objection as to non-maintainability of this suit. Moreover, neither of the said applications are even listed as of today before the Court.

15. The consequence of the non-compliance of a conditional order under Order XIII-A Rule 7 CPC has been clearly provided in the said provision itself. Order XIII-A Rule 7 is extracted below:

*ORDER XIII-A Summary Judgment*

*Xxx xxx xxx*

*7. Conditional order.—(1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it shall do so, the Court may make a conditional order as set forth in Rule 6 (1) (b).*



(2) *Where the Court makes a conditional order, it may:—*

(a) *make it subject to all or any of the following conditions:—*

(i) *require a party to deposit a sum of money in the Court;*

(ii) *require a party to take a specified step in relation to the claim or defence, as the case may be;*

(iii) *require a party, as the case may be, to give such security or provide such surety for restitution of costs as the Court deems fit and proper;*

(iv) *impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion;*  
*and*

(b) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.

16. As per Order XIII-A Rule (7)(2)(b), the consequences of the failure to comply with the conditional order have already been specified in the judgment dated 27th March, 2024. Thus, the said order having now been upheld by the Supreme Court with some modifications and the Defendants having not complied with the conditions imposed, the consequence under paragraph 36 of the said judgment has to follow.

17. Order XIII-A of CPC allows for summary judgment in civil suits to expedite cases where there is no real prospect of success for the respondent. However, sub-rule 7 mandates that the Court dismiss an application for summary judgment if there is a real prospect of the Defendant successfully defending the claim or the claimant succeeding. Additionally, Rule 6(b), in



conjunction with Rule 7, empowers the Court to issue a conditional order instead of a final judgment if it believes the defense is unlikely to succeed. This conditional order can require the Defendant to deposit money or provide security as deemed appropriate by the Court, ensuring a balance between judicial efficiency and the right to a fair trial. Thus, the compliance with procedural requirements as laid under the provision is to benefit the Defendant to proceed to trial while securing the Plaintiff. Non-compliance of the same shall lead to decree being passed. Madras High Court in the decision of *Syrma Technology Private Limited v. Powerwave Technologies Sweden AD (in bankruptcy), Rep. by the Bankruptcy Administrator and Another [2020 SCC OnLine Mad 5737]*, while discussing the regime of summary judgements held as under:

*20. Thus, to conclude, we are of the view that when an application is filed under Order XIII-A, a Court is expected to keep in mind the provisions contained in Order XIII-A Rules 6 and 7 before considering a summary judgment under Order XIII-A Rule 3. We are conscious that Order XIII-A Rule 6 also speaks of a judgment on the claim both part or full. Order XIII-A Rule 7 read with other modes mentioned under Order XIII-A Rule 6 act as contraceptive to grant of summary judgment under Order XIII-A Rule 3.*

*21. We have already discussed the scope and ambit of Order XIII-A. Thus, we do not wish to repeat it except by holding that there is a remarkable difference in the word appears as mentioned under Order XIII-A Rules 7 and 3, which uses the words 'considers'. Furthermore, the Order XIII-A Rule 6 gives discretion to the Court. Therefore, looking from any perspective, it is not necessary that the Court will have to decide only two issues on an application filed under Order XIII-A viz., to allow it or dismiss it, while we hold that at the time*



*of considering the application the Court can go into the merits of the case, which is exactly the object of the provision. However, the Court has to keep in mind the import of Order XIII A Rule 6. It has to necessarily record a finding that it is proceeding under Order XIII-A Rule 3 instead of exercising its discretion otherwise provided under Order XIII-A Rule 6. Thus such a discretion when exercised has to be in tune with Order XIII-A Rule 6. While exercising such a power, it appears to the Court that it would come under the purview of Order XIII-A Rule 7, it should pass a conditional order. However, if it considers that an applicant has got no real prospect of succeeding and there is no other compelling reason, then it can proceed to give a summary judgment. There is a mandated difference between the word “appears” and “considers”. One is cursory and the other a bit more adjudicatory. The later requires more application of mind. Stage to “consider” follows “to appear”.*

18. In the present case, an opportunity was provided to the Defendant to go to trial despite the consideration of lack of merit, by passing a conditional order. However, the Defendant failed to even comply with the same. Thus, in view of the above discussion and non-compliance of the conditional order, the Plaintiff is thus entitled to a decree for the amount claimed in the present suit. The prayers in the suit are as under:

*a. Pass an order/judgment/decree in favour of the Plaintiff and against the Defendant, directing the Defendant to pay:*

- *A sum of INR 4,21,00,000/- (Indian Rupees Four Crores Twenty One Lakhs Only) as principal,*
- *A sum of INR 1,10,13,360/- [Indian Rupees One Crore Ten Lakhs Thirteen Thousand Three Hundred and*



*Sixty Only] as interest @ 6.976% per annum, commencing from 01.09.2016 to 31.05.2020, Total amounting to INR 5,31,13,360/- [Indian Rupees Five Crores Thirty One Lakhs Thirteen Thousand Three Hundred and Sixty]*

- *Along with pendente lite and future interest at the rate of 18% per annum*

19. The suit is accordingly decreed as per the prayer clause. Decree sheet be drawn in above terms.

20. Insofar as the review is concerned which is stated to have been filed before the Supreme Court, if any orders are passed by the Hon'ble Supreme Court, the Defendant is then free to approach this court or avail of its remedies in accordance with law, in terms of the said order/s.

21. Petition is disposed of. All pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH  
JUDGE**

**MAY 17, 2024**

*Rahul/bh*