



2025:DHC:6994-DB



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

% ***Reserved on: 06<sup>th</sup> August, 2025.  
Pronounced on: 19<sup>th</sup> August 2025.***

+ **RFA(COMM) 462/2025 & CM APPL. 48144/2025, CM APPL. 48145/2025, CM APPL. 48146/2025, CM APPL. 48147/2025**

M/S JANNAT TEXTILES .....APPELLANT  
Through: Mr. Harish Pandey & Mr. Anshuman  
Tiwari, Advocates.  
versus

ANIL KHAJANCHI .....RESPONDENT  
Through: None.

**CORAM:  
HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE  
HON'BLE MR. JUSTICE ANISH DAYAL**

**JUDGMENT**

**ANISH DAYAL, J.**

1. This appeal seeks setting aside of impugned order and decree dated 30<sup>th</sup> April 2025, passed by the District Judge (Comm.), North, Rohini Courts, Delhi in CS (COMM.) No.14/2018 ('*suit*'). The suit was decreed in favour of respondent (hereinafter referred to as '*plaintiff*') for a sum of Rs.25,30,028/- along with cost and *pendente lite* interest at the rate of 9% per annum till realization against the appellant (hereinafter referred to as '*defendant*'). The aforesaid suit was filed under Order XXXVII of Code of



Civil Procedure, 1908 (*‘CPC’*) for recovery of the said amount with *pendente lite* interest at the rate of 18% per annum.

**Brief factual background**

2. Plaintiff had filed the said suit claiming amounts due from defendant arising out of business transactions between them. Plaintiff is engaged in the wholesale business of fabrics under the name and style of *M/s Shree Shyam Textiles*, having its office at 10/233, Gali. No., Ram Nagar, Gandhi Nagar, Delhi-110031. According to the plaintiff, defendant was one of its clients, and they had been doing regular business for many years. The defendant used to make payments upon delivery of fabrics to his place and thereafter bills were raised, which bore the receiving of defendant.

3. On 01<sup>st</sup> March 2016, as per the plaintiff, defendant had approached them for purchase of fabrics, but stated that, due to cash crunch, payments would be made after two months. Considering there was a prior existing relationship with the defendant, plaintiff agreed to supply the fabrics on credit. Subsequently, the defendant purchased fabrics for sum of *Rs.25,30,028/-*, for which plaintiff raised bills which were duly received and acknowledged. The dates of the bills were as under:

“09.03.2016, 10.03.2016, 12.03.2016, 16.03.2016,  
20.03.2016, 22.03.2016, 26.03.2016, 30.03.2016,  
09.04.2016, 10.04.2016, 12.04.2016, 14.04.2016,  
17.04.2016, 21.04.2016, 28.04.2016, 01.05.2016,  
03.05.2016, 08.05.2016, 11.05.2016, 15.05.2016,  
17.05.2016, 18.05.2016, 21.05.2016, 22.05.2016,  
24.05.2016, 26.05.2016, 28.05.2016, 29.05.2016,



31.05.2016, 02.06.2016, 04.06.2016, 09.06.2016,  
12.06.2016.”

4. Plaintiff alleged that after expiry of two months, he requested defendant to clear the outstanding payment, which defendant assured that he would do soon. However, after waiting for another two months, the plaintiff again contacted the defendant, who issued a cheque bearing *No.118944* dated 15<sup>th</sup> July 2016 amounting to *Rs.25,30,028/-*, assuring that the cheque would be honoured. On presenting the cheque on 15<sup>th</sup> July 2016, the cheque got dishonoured and was returned by the bank with remarks '*funds insufficient*'.

5. Thereafter, plaintiff made attempts to contact defendant; defendant sent some commonly known persons to give assurance that the outstanding payment would be cleared. However, the said amounts remained outstanding, and the plaintiff filed the said suit.

6. Defendant entered appearance stating that court summons were served on 19<sup>th</sup> November 2018. Application under Order XXXVII Rule 3(4) of CPC was filed by plaintiff for issuance of summary judgment, claiming that no triable issues arose in the said suit. Summons were issued to defendant by the District Court on 3<sup>rd</sup> September 2019, and the matter was fixed for 12<sup>th</sup> September 2019.

7. In the meantime, application was filed under Order XXXVII Rule 3(5) of CPC by the defendant for grant of leave to defend. Defendant claimed that there was no dispute between the parties, since he used to make part payments from time to time through cheques which were duly cleared.



According to statement of account maintained by defendant, there was no balance due to the plaintiff. The tabulation which the defendant presented is extracted as under:

Year	Purchase including previous balance	Payment	Balance
01/04/14 to 31/03/2015	1,40,79,673/-	1,39,34,614/-	1,45,059/-
01/04/15 to 31/03/2017	1,37,43,453/-	1,33,33,422/-	4,10,031/-
01/04/16 to 31/03/2017	20,39,964/-	24,69,690/-	(-)4,29,726/-

8. Defendant claimed that, in fact, a payment of Rs.4,29,726/- was made in excess to plaintiff. The cheque in question bearing No.118944 dated 15<sup>th</sup> July 2016 was given by the defendant to the plaintiff for security purpose only and the cheque was forged and fabricated.

9. On 7<sup>th</sup> November 2022, plaintiff's counsel stated before the District Court that they have not gone for Pre-Institution Mediation, which was mandatory as per Section 12A of the Commercial Courts Act, 2015 and therefore, the plaint was rejected by the District Judge. On 5<sup>th</sup> March 2025, the application filed by defendant seeking leave to defend was allowed by the District Judge, subject to depositing half of the suit amount of



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*Rs.25,30,028/-* i.e. *Rs.12,65,000/-* in the form of a Fixed Deposit Receipt (*FDR*) in the name of the Court within four weeks.

**10.** Against the said order, the defendant filed petition before this Court being CM (Main) No.921/2025. When the matter came up before this Court on 19<sup>th</sup> May 2025, it was noted that the petition had become infructuous, since the Trial Court had already decreed the suit on 30<sup>th</sup> April 2025 as the condition for leave to defend had not been complied with by the defendant.

**11.** The present appeal, therefore, assails the said impugned order and decree dated 30<sup>th</sup> April 2025. Counsel for appellant contends that, since CM (Main) No.921/2025 has been filed before this Court challenging the Trial Court's order granting leave to defend on a conditional basis, in the meantime, the Trial Court should not have gone ahead and pass a decree. It was further submitted that the statutory period of 120 days for filing the written statement had not expired and, therefore, the impugned order was bad in law.

**12.** It was also alleged that the suit had been instituted in the name of the proprietorship concern, which was not a legal entity. Apart from this, the issues raised in the leave to defend application were reiterated, *viz.* that the cheque which was dishonoured was given for the purpose of security, that the respondent had forged the said cheque after a period of about six years with the intent to extorting money, and that the account balance was, in fact, in favour of the appellant.



13. This Court does not find any infirmity in the impugned order and decree dated 30<sup>th</sup> April 2025 and, therefore, is not inclined to allow the appeal of the appellant. *Firstly*, both respondent and appellant admitted that there were business transactions between them and, therefore, it was not a disputed fact.

14. *Secondly*, while appellant claimed that there was a credit balance in its favour, respondent claimed that there was an outstanding balance for which a cheque had been given.

15. In respect of the cheque, given for a specified amount of Rs.25,30,028/- per the respondent, aside from the appellant alleging that it was given for the purpose of security, and that it was forged and fabricated, there was no other assertion. Handing over a cheque itself is a form of admission of liability to the recipient of the cheque. There is a presumption of liability under Section 139 read with Section 141 of the Negotiable Instruments Act, 1881.

16. Moreover, the assertion that the cheque had been given for the purpose of security seems like a bald averment made by the appellant only in order to mount some defence. The Supreme Court in its decision in *Sripati Singh v. State of Jharkhand*, (2022) 18 SCC 614 has reiterated that the cheque, even if given for security purposes, would be consider as a valid tender. The relevant paragraph is extracted, for ease of reference:

*“21. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance.*



*“Security” in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time-frame and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI Act would flow.”*

Appellant’s assertions for denial of such liability would, therefore, be untenable in facts and circumstances of the case.

**17.** *Thirdly*, appellant got a chance to obtain a conditional leave to defend from the Trial Court, which was not availed due to failure to deposit 50% of the claimed amount within four weeks. The order for allowing the leave to defend was passed on 5<sup>th</sup> March 2025, and four weeks would have expired on 2<sup>nd</sup> April 2025. Having no other option and there being no stay on the proceedings before the Trial Court, the decree was passed on 30<sup>th</sup> April 2025, basis the suit under Order XXXVII of CPC.

**18.** *Fourthly*, the argument of appellant that the Trial Court should have waited for the matter to be disposed of by the High Court, does not appeal to this Court. The matter came up before this Court on 19<sup>th</sup> May 2025 when the



decree had already been passed. It was up to the appellant to have secured its position; in case it wanted to defend the suit.

19. As per Order XXXVII Rule 3(6) of CPC, once defendant is permitted to defend the whole or any part of the claim and the Court has directed him to furnish such security and within such time as may be fixed by the Court, failure to give such security within the time specified, plaintiff is entitled to judgment. The said provision is extracted as under for reference:

***“3. Procedure for the appearance of defendant.—***

.....

*(6) At the hearing of such summons for judgment,—*

*(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or*

*(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.*”

(emphasis added)

20. The Trial Court was, therefore, not amiss in decreeing the suit on 30<sup>th</sup> April 2025, the time frame of four weeks for deposit of 50% of the suit amount, having been exhausted.



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21. *Fifthly*, having availed the opportunity of leave to defend and being granted the same conditionally, failure of defendant to comply with the same, disentitles him from defending the suit which was filed by plaintiff.
22. The Court is, therefore, not inclined to accept appellant's contentions in support of his appeal. The appeal is, therefore, dismissed. Pending applications, if any, are rendered infructuous.
23. Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)**  
**JUDGE**

**(NITIN WASUDEO SAMBRE)**  
**JUDGE**

**AUGUST 19, 2025/ak/zb**