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

% ***Date of Decision: 11<sup>th</sup> August, 2025***

+ CM(M) 1290/2025 & CM APPL. 43098/2025

MOHD RAFAT KHAN .....Petitioner

Through: Petitioner in person.

versus

MS NAJMA RAZA .....Respondent

Through: None.

**CORAM:**

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

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

**CM(M) 1290/2025 & CM APPL. 43098/2025**

1. Petitioner has filed a suit against his wife (since reportedly divorced) under summary procedure and is aggrieved by order dated 20.05.2025 whereby the learned Trial Court has granted his wife *unconditional leave to defend* the above suit.
2. The Court has gone through the averments made in the plaint, as well as, in the application filed by his wife whereby she was seeking *leave to defend* the suit in question.
3. The plaintiff is reportedly an I.T. Consultant and the respondent herein is a lecturer. They got married in the year 2008. As per the averments appearing in the plaint, they are living separately since the year 2021.
4. According to the plaintiff, the defendant was already under debt on account of some personal loans and could not repay those loans and, therefore, recovery notices were served by the banks. Under these circumstances, she borrowed money from the plaintiff to clear pending EMIs



and to foreclose such loan accounts.

5. According to plaintiff, a loan of Rs. 3,75,000/- was given to her by issuing cheques. Such cheques were issued on 27.11.2010, 24.03.2011 and 29.03.2011. He further contends that in discharge of her such liability, defendant issued a cheque of Rs. 6.50 lakh dated 05.09.2021, which when presented returned dishonored and, therefore, summary suit has been filed based on the above said cheque.

6. In the application filed by the respondent seeking *leave to defend*, she has, categorically, claimed that her husband had given her instructions to keep three or four cheques ready with her signatures in the drawer and, thereby, she, somehow, justifies her signatures appearing on the cheque in question.

7. She, however, at the same time also claimed that the date and amount filled up in the cheque were not in her handwriting but were in the handwriting of her husband. According to her, when the relationship between her and her husband got strained in the month of April 2021, her husband has forged and fabricated the date and amount on the cheque in order to take revenge and she, categorically, claimed that she had never taken any loan from her husband.

8. The learned Trial Court after taking note of the respective stand taken by the petitioner and respondent came to the opinion that there were many triable issues involved in the suit in question and, therefore, unconditional *leave to defend* has been granted. The relevant observations are as under:-

*“.....The factum of marriage between parties is not disputed. As per averments of the plaintiff, he had given loan to the defendant during the period when the marriage between parties subsisted, therefore, it is a triable issue whether from 2010 to 2011 when the marriage between the parties was subsisting, plaintiff had given the alleged amount to the defendant/his wife as a loan or for any other purpose. The plaintiff had not*



*filed any bank statement to support the averments that he had given loan to the defendant and therefore, the issue of grant of loan by the plaintiff to the defendant is also a triable issue in the present suit. Similarly, as per plaintiff, he had given loan to the defendant during the period from 2010 to 2011 and defendant had issued cheque in question in March 2021 i.e. after a gap of approximately 10 years, therefore, the issue of limitation also needs to be adjudicated for which defendant should be given opportunity to put her defence forward. Further, with the application leave to defend, defendant had filed certified copy of statement of account showing the withdrawal of money by the plaintiff from the bank account of defendant and defendant should be given opportunity to prove the same. In view of aforesaid discussion, it is clear that there are many triable issues involved in the present suit, therefore, the application of the defendant for grant of leave to defend is hereby allowed and defendant is allowed to defend the suit unconditionally.”*

9. Admittedly, there is no separate document as such which may show that there was any advancement of loan. Merely on the basis of some cheques issued way back in year 2010 and 2011, it cannot be automatically inferred so. Moreover, this Court cannot be oblivious of the fact that the case is between the two spouses and there was matrimonial discord between them and even as per the averments made in the plaint, the parties are living separately since 2021.

10. The cheque in question is also of the year 2021 whereas the alleged loan was given way back in 2010 and 2011.

11. In view of the above said peculiar facts and the relationship between the parties, the learned Trial Court was justified in observing that it was a fit case where *unconditional leave to defend* was required to be given.

12. A bare perusal of the application filed by the respondent would indicate that she has, in fact, been able to raise triable issues and in such a situation, the petitioner is not justified in seeking summary judgment outrightly. The discretion seems to have been exercised in a judicious manner and there does not appear to be any illegality or perversity in the impugned order,



2025:DHC:6803



necessitating interference by invoking supervisory powers.

13. In view of the above, this Court does not find any merit in the present petition and the same is accordingly dismissed.

14. However, the observations made hereinabove are tentative in nature and the learned Trial Court shall decide the suit as per the evidence to be led before it, without being influenced by any of the observation appearing hereinabove or appearing in order dated 20.05.2025.

15. Pending application stands disposed of in aforesaid terms.

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

**AUGUST 11, 2025/neha**