



\$~64

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 28th April, 2025**

+ CM(M) 411/2025 & CM APPL. 12235/2025

RAJBALA

.....Petitioner

Through: Ms. Archana Gaur, Advocate
(DHCLSC) with Ms. Ring Baliyan,
Advocates with petitioner in person.

versus

KAUMUDI RANI & ORS.

.....Respondents

Through: Ms. Urmila, Advocate for respondent
No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The point raised in the present petition is a very short one.
2. Petitioner had filed a suit under Order XXXVII CPC. However, *vide* order dated 26.11.2024, the learned Trial Court has converted the suit into an ordinary suit, holding that the suit did not fall within the scope and ambit of Order XXXVII CPC.
3. According to plaintiff/petitioner, she had lent a sum of Rs.5,00,000/- to one Sh. Chanderhas Garg on 01.07.2022. Sh. Chanderhas Garg issued a pronote in this regard. Unfortunately, he died on 31.01.2023. Thereafter, the plaintiff/petitioner sent legal notice to his legal heirs but since the liability under the abovesaid pronote was not cleared, a summary suit was filed.
4. Learned Trial Court has taken a view that summary suit is not maintainable as the plaintiff/petitioner is, merely, seeking recovery of amount taken by Sh. Chanderhas Garg, who is no more alive and it is not clear as to



who are his legal heirs and whether they had inherited any property, left by him or not. It also observed that, even otherwise, none of the alleged legal heirs was signatory to a pronote and, therefore, the suit was not maintainable under Order XXXVII CPC.

5. Learned counsel for the petitioner/plaintiff submits that the issue is no longer *res integra* and in this regard, she strongly relies upon judgment of Coordinate Bench of this Court given in *Sanjeev Jain Vs. Rajni Dhingra and Others: 2018 SCC OnLine Del 13093*. It is contended that the abovesaid judgment clinches the issue and, therefore, there was no reason or occasion for the learned Trial Court to have converted a suit into a regular suit.

6. Para 14, 15 and 16 of said judgment read as under:-

“14. The relevant portion of Sarla Devi (supra) is extracted herein below:

“3....

*Thereupon the appellants required the respondents to refund the sum of Rs. 4 lakhs, which was paid by Brahm Prakash to the first two respondents and Tej Ram at the time of execution of the agreement to sell. Failing to receive any favorable response from the respondents, the appellants filed a suit under Order 37 CPC against them on the basis of the agreement to sell. On November 22, 1994 the learned Single Judge passed an order holding that the suit was not triable under Order 37 CPC as the third and fourth respondents, were not parties to the agreement to sell. In reaching this conclusion the learned single Judge relied upon a decision of the Bombay High Court in *Rajesh Steel Centre v. Smt. Rashmi K. Agarwal, 1986 Mah LJ 993*. It is this order of the learned Single Judge which has been impugned before us.*

4. We have heard learned Counsel for the parties and we are of the opinion that the learned Single Judge was not right in holding that the suit under Order 37 CPC would not lie. In an identical matter where the present appellants had instituted a suit, being Suit No. 1507/94 under Order 37 against some other parties, the learned Single Judge has veered around to the view that such a suit would be maintainable against the heirs and legal representatives of the contracting party who have received his assets. The following are the observations of the learned Single Judge recorded in his order dated May 3, 1995 with which we respectfully concur.”



15. Thus, the above judgments are conclusive as to the maintainability of the present suit against the LRs of Late Mr. Virendra Dhingra. This Court however, is not going into the issue as to whether the said LRs in fact came into possession of any assets of Mr. Dhingra, or if the decree which may be passed in the present suit is executable against Mr. Dhingra's assets and if so, against which of the assets. This is not an issue that has been raised in the present suit.

16. The maintainability of the suit being not an issue any more, the facts of the present case show that Mr. Dhingra had given a cheque dated 26th December, 2017 for a sum of Rs. 3 crores. The notice dated 21st March, 2018 is also placed on record. The payment of the interest also having been made on various dates, the availing of the loan in itself is not in dispute.”

7. The facts are, virtually, identical herein, also.
8. It seems that the abovesaid judgment has escaped the notice of the learned Trial Court.
9. Learned counsel for respondent No.2 appears on advance notice and submits that there are various triable issues and, even otherwise, it seems to be a fit case where leave to defend needs to be granted.
10. Fact remains that the present case is at a very nascent stage and the aspect of there being any triable issue or not, would come little later, once the suit is considered summary in nature. From that angle, at least, all the rights and contentions of the defendants/respondents are left open.
11. Learned counsel for the petitioner/plaintiff submits that the case is still at the same stage, as the petitioner/plaintiff has not yet taken any step for issuing even regular summons.
12. The next date before the learned Trial Court is stated to be 24.05.2025.
13. Keeping in mind the overall facts and circumstances of the case, the present petition is disposed of with direction to the learned Trial Court to



consider the abovesaid aspect afresh in light of the abovesaid judgment and then to decide whether the suit is maintainable under Order XXXVII CPC or not. At the cost of repetition, it is clarified that all the contentions raised by the respondents/defendants are left open and it is also clarified that this Court has not made any observation, either way, with respect to the merits/demerits of such contention of petitioner herein.

14. The petition stands disposed of in aforesaid terms.
15. All the pending applications also stand disposed of accordingly.

(MANOJ JAIN)
JUDGE

APRIL 28, 2025
st/js