



2025:DHC:8844-DB



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

***Date of Decision: 06.10.2025***

+ FAO(OS) 113/2025, CM APPL. 62502/2025, CM APPL. 62503/2025 and CM APPL. 62504/2025

**RAHIS MIRZA @ KAMAL**

.....Appellant

Through: Mr. Shiv Kumar Gautam and  
Mr. Rohit Gupta, Advs.

versus

**S. PARAMBIR SINGH**

.....Respondent

Through: Dr. L.S. Chaudhary, Dr. Ajay  
Chaudhary, Ms. Monika  
Chaudhary, Ms. Vinita and Mr.  
Bharat Chaudhary, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN  
SHANKAR**

**J U D G M E N T (O R A L)**

**ANIL KSHETARPAL, J.**

1. Through the present Appeal, the Appellant assails the correctness of the interim order dated 26.08.2025 [hereinafter referred to as "Impugned Order"] in IA No.8277/2021, passed by the learned Single Judge in CS(OS) No.103/2021 captioned ***S. Parambir Singh vs. Rahis Mirza @ Kamal Prasad***, while granting conditional leave to contest the suit.

2. The learned Single Judge came to the conclusion that the defence put forth by the Plaintiff (Respondent herein) is required to be considered after the parties are granted opportunity to lead evidence.



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3. However, *vide* the Impugned Order the learned Single Judge directed the Defendant (Appellant herein) to deposit a sum of Rs.50 Lakhs within a period of four weeks with the worthy Registrar General of this Court.

4. Some facts are to be noticed in order to comprehend the controversy involved in the present case.

5. The Plaintiff who is a practicing Advocate filed the suit claiming that his father gave loan of Rs.2 Crore in cash to the Defendant on 01.08.2016, which the Defendant promised to repay along with interest at the rate of 12% p.a. by 31.05.2017.

6. It is also the case of the Plaintiff that the Defendant defaulted in repayment and a receipt acknowledging the debt was issued on 29.08.2017 by the Defendant along with four post-dated cheques of Rs.50 Lakh each. Subsequently, on 03.03.2018, an extension was granted wherein previous cheques were cancelled and fresh cheques were issued. The Defendant filed an application for leave to contest while claiming that he has never borrowed money from the Plaintiff's father and in fact, Sh. Arun Kumar executed an agreement to sell in favour of the Plaintiff's mother upon receipt of Rs.71 Lakh (total sale consideration for sale of immovable property)

7. The sale deed was not executed and there was a dispute. Hence, the Defendant was pressurized by the Plaintiff to execute these documents.



8. Subsequently, there was a settlement between Sh. Arun Kumar and Plaintiff's mother.

9. The Plaintiff has also filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 [hereinafter referred to as "NI Act"] as the cheques, on presentation were dishonored. The Defendant was acquitted in the same.

10. The Appeal against the aforesaid judgment is pending.

11. The learned Single Judge upon consideration of these facts came to the following conclusion:

*"19. The defendant has also set up a case where the entire transaction and the signing of the receipt etc., has taken place on account of another transaction which actually was between one Arun Kumar and the mother of the plaintiff.*

*20. The aforesaid aspect, however, will have to be looked into once the parties are allowed to adduce oral and documentary evidence.*

*21. Having considered all the aforesaid circumstances, the Court finds that it is not a case where the defendant has no case at all or no substantial defence to raise.*

*22. Under these circumstances, the Court deems it appropriate to allow the instant application."*

12. However, in Paragraph No.23 of the Impugned Order the Defendant was directed to deposit Rs.50 Lakh within a period of four weeks.

13. Heard learned counsel representing the parties at length and with their able assistance perused the paper book.

14. On the one hand, learned counsel representing the Appellant (Defendant before the learned Single Judge) submits that the



Appellant was residing as a tenant in the premises owned by the Respondent's brother-in-law and he was a mere witness to the transaction carried out between Sh. Arun Kumar and the Plaintiff's mother. He submits that there is a positive finding arrived at by the Competent Court in the proceedings under Section 138 of the NI Act that the Respondent has failed to prove that the cheques were issued for a due payment. Hence, the learned Single Judge erred in imposing the condition.

15. *Per contra*, learned counsel representing the Respondent (Plaintiff before the learned Single Judge) has drawn the attention of the Court to two receipts and consequential cheques signed by the Appellant acknowledging the payment.

16. After having considered the submissions of the learned counsel representing the parties, we are of the view that the conditional order is not sustainable because the learned Single Judge had come to the conclusion that the Appellant has a defence which has some *prima facie* substance and the parties are required to be given an opportunity to prove their case.

17. In these circumstances, imposition of condition for payment of Rs.50 Lakh for granting leave to contest was inappropriate, particularly when there was no material document to substantiate the loan of Rs.2 Crore and return of some amount representing the interest by the Appellant from time to time. In response to a Court question to the counsel representing the Appellant with respect to Appellant's immovable property, it has been stated that the Appellant does not



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own any immovable property and the Appellant does not possess the means to pay Rs.50 Lakh as directed in the Impugned Order. Failure to deposit the amount would result in depriving the opportunity to the Appellant to defend the suit.

18. Moreover, the Defendant was acquitted in the criminal complaint filed under Section 138 of the NI Act by the Plaintiff. Hence, the Impugned Order is modified and the condition as specified in Paragraph No.23(i) shall stand deleted.

19. With these observations, the Appeal is allowed.

20. Needless to observe that the observations made by this Court or the observations made by the learned Single Judge while passing the Impugned Order shall not be construed as final expression on the merits of the case.

21. The present Appeal, along with pending applications, stands disposed of.

**ANIL KSHETARPAL, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**

**OCTOBER 06, 2025**

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