



2026:DHC:4176



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

% ***Reserved on: 19th February, 2026***

Pronounced on: 12th May, 2026

+ **RFA 1093/2025, CM APPL.75612/2025, 75853/2025 & 11472/2026**

SANJAY GARG

S/o Sh. Bashesar Dayal,
R/o H.No. D-4/47, Sector 15,
Rohini, New Delhi.

.....Appellant

Through: Mr.Sanjay Kumar Mishra, Advocate.

versus

SANJAY KUMAR ALIAS SANJAY MITTAL ALIAS SANJAY

S/o Sh. Tekchand,
R/o B-52, Overseas Apartment,
Sector 09, Rohini, New Delhi.

....Respondent

Through: Appearance not given.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CM APPL. 11472/2026 (Condonation of Delay)

1. The present Application has been filed by the Appellant seeking Condonation of Delay of 241 days, in filing the present Appeal.
2. For the reasons mentioned in the Application the same is allowed. The delay of 241 days in filing the present Appeal is Condoned.
3. The Application stands disposed of in the aforesaid terms.

RFA1093/2025

4. Regular First Appeal under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 has been preferred on behalf of the



Appellant/Defendant, Sh. Sanjay Garg assailing the *ex-parte Judgment and Decree dated 29.08.2024* whereby the Suit of the Plaintiff/Respondent for recovery of Rs.21,50,000/- along with interest @ 6% per annum from the date of institution of the Suit till realization, along with costs, *was decreed* under Order XXXVII Rule 2(3) CPC, on account of failure of the Defendant/Appellant to enter appearance within the prescribed period.

5. The Appellant has further assailed the Judgment dated 17.10.2025 passed in MISC DJ No. 69/2025, whereby the Application under Order XXXVII Rule 4 CPC seeking setting aside of the *ex-parte Judgment and Decree dated 29.08.2024*, came to be dismissed.

6. The Plaintiff filed CS DJ No. 315/2024, under Order XXXVII CPC for recovery of Rs.21,50,000/- along with interest @ 6% per annum from the date of institution of the Suit till realization, along with costs.

7. *The facts, in brief*, are that the parties to the Suit, were known to each other for a long period and shared cordial relations. It is the case of the Plaintiff/Respondent that in the second week of January, 2022, the Defendant/Appellant approached the Plaintiff/Respondent seeking financial assistance by way of a friendly loan of Rs.10,00,000/-on the representation that the said amount was required to be deposited as security, for procuring certain contracts from the Governments of Uttar Pradesh and Bihar.

8. The Plaintiff, believing the said representation and upon the assurance of the Defendant/Appellant that the amount would be returned within ten months, he advanced a sum of Rs.10,00,000/- to the Defendant/Appellant.

9. Again, in the month of June, 2022, the Defendant/Appellant approached the Plaintiff/Respondent and sought a friendly loan of



Rs.6,50,000/-, assuring that the said amount would be repaid along with the earlier loan amount.

10. The Plaintiff further claimed that during the said period, the Defendant/Appellant met the Plaintiff/Respondent on several occasions and repeatedly assured that the entire friendly loan amount would be repaid as per the agreed schedule.

11. In the first week of September, 2022, the Defendant/Appellant visited the office of the Plaintiff/Respondent and again sought a friendly loan of Rs.5,00,000/- on the ground that the said amount was required for the treatment of his sister-in-law.

12. The Plaintiff/Respondent accordingly advanced the said amount on the condition that the total loan amount of Rs.21,50,000/- would be repaid by October, 2022. Thereafter, the Defendant/Appellant sought an extension of approximately 3-4 months for repayment of the entire loan amount of Rs.21,50,000/-.

13. As per the Plaintiff/Respondent, upon persistent demands for repayment of the loan amount, the *Defendant/Appellant issued a post-dated cheque bearing No. 697350 dated 01.06.2023 for a sum of Rs.21,50,000/-.*

14. On 30.05.2023, when the Plaintiff/Respondent informed the Defendant/Appellant about the proposed presentation of the aforesaid cheque for encashment, the Defendant/Appellant allegedly came to the office of the Plaintiff/Respondent, created a ruckus/disturbance, caused damage to the office property and also assaulted the Plaintiff/Respondent, pursuant to which a complaint was lodged *vide* DD No. 69A dated 31.05.2023 in local police station.



15. When the Investigating Officer contacted the Defendant/Appellant, he and his brother assured the Plaintiff/Respondent over telephone, that the amount would be repaid within a day or two. The Defendant/Appellant also asked the Plaintiff/Respondent to present the cheque for encashment.

16. The Plaintiff/Respondent accordingly, presented the aforesaid cheque for encashment on 01.06.2023; however, it was dishonoured and returned unpaid *vide* Return Memo dated 02.06.2023 with the remarks “PPS NOT CONFIRMED”. Thereafter, the Plaintiff/Respondent contacted the Defendant/Appellant, who allegedly admitted his liability, but failed to discharge the same.

17. Thereafter, within seven days from receipt of information regarding dishonour of the cheque, the Plaintiff/Respondent issued a Legal Notice dated 09.06.2023 through speed post to the Defendant/Appellant calling upon him to make payment of the cheque amount within a period of 15 days from the date of receipt of the said notice. However, despite service of the aforesaid notice on 09.06.2023, the Defendant/Appellant failed to make payment of the cheque amount.

18. Consequently, the Plaintiff/Respondent filed a *Complaint under Section 138 of the Negotiable Instruments Act bearing CC No. 1817/2023, which is pending trial.*

19. The Plaintiff/Respondent thereafter, filed the present Suit under Order XXXVII Code of Civil Procedure, 1908 (*hereinafter referred to as “CPC”*) for recovery of Rs.21,50,000/- along with *pendente lite and future interest @ 18% per annum.*

20. After institution of the Suit, *summons for Appearance* were issued to the Defendant/Appellant, *vide* Order dated 24.04.2024. As per the report of



the Assistant Ahlmad dated 28.08.2024, the Defendant/Appellant was served on 23.07.2024, however, no appearance was filed within the statutory period of ten days, as prescribed under Order XXXVII Rule 2(3) CPC.

21. Consequently, the learned Trial Court, *vide ex-parte Judgment and Decree dated 29.08.2024*, decreed the Suit for a sum of Rs.21,50,000/- along with interest @ 6% per annum from the date of institution of the Suit till the date of Decree, along with costs.

22. Thereafter, the Appellant filed *MISC DJ No. 69/2025 under Order XXXVII Rule 4 read with Section 151 CPC*, seeking setting aside of the *ex-parte Judgment and Decree dated 29.08.2024*. It was asserted that summons of the Suit had never been served upon the Appellant and that he became aware of the *ex-parte Judgment and Decree* only upon receipt of Notice in the execution proceedings. The Appellant further denied the signatures appearing on the service reports dated 29.05.2024 and 23.07.2024 and relied upon the opinion of a handwriting expert, to contend that the said signatures were not his signatures.

23. The *Plaintiff/Respondent* contested the said *Application* and contended that the handwriting Expert, Sh. Deepak Jain, had rendered his opinion merely on the basis of comparison of the admitted signatures with the certified copies of the summons and not the original documents. It was further asserted that neither were the original summons examined nor was any permission obtained by the handwriting expert, for taking photographs of the original record.

24. The Appellant further contended that a blank signed cheque had been handed over to one Supreet, who allegedly passed on the said cheque to the *Plaintiff/Respondent*, *and that the same had been misused*. It was further



asserted that there existed no legally enforceable debt or liability against the Appellant and, therefore, sufficient grounds existed for grant of leave to defend.

25. The *Plaintiff/Respondent*, however, took the stand that the said Supreet was an imaginary person and no relationship, either between Supreet and the Defendant/Appellant, or between Supreet and the Plaintiff/Respondent, had been established. It was further pointed out that the Defendant/Appellant had never lodged any Complaint regarding the alleged misuse of the cheque and, therefore, the defence raised by the Defendant/Appellant was sham and devoid of merit.

26. The Appellant further argued that the *ex-parte* Judgment and Decree had been obtained by fraud and concealment of material facts and, therefore, the same was *non-est* in the eyes of law, and liable to be set aside.

27. In support of the aforesaid contention, reliance was placed upon the Judgment of the Hon'ble Supreme Court in *A. V. Papayya Sastry and Others vs. Government of A.P &ors.*,(2007) 4 SCC 221 wherein it was observed that a Judgment obtained by fraud is a nullity in the eyes of law.

28. The aforesaid contention was disputed by the Plaintiff/Respondent, who maintained that while the proposition of law laid down by the Hon'ble Supreme Court was not in dispute, the same had no application to the facts of the present case as no *prima facie* fraud had been shown to have been committed.

29. The **learned District Judge**, upon consideration of the rival contentions, **held** that the report of the Process Server was reliable and that the opinion of the Handwriting Expert could not be relied upon since the



comparison of signatures had been undertaken on the basis of certified copies of the summons and not the original record.

30. It was further observed that summons had been served upon the Defendant/Appellant on two occasions, i.e., on 24.04.2024 and 01.07.2024, yet no appearance was entered on his behalf. The learned District Judge also noted that the Defendant/Appellant had not disputed the signatures appearing on the cheque issued in favour of the Plaintiff/Respondent and, accordingly, *rejected the plea that summons had not been served upon the Defendant/Appellant.*

31. Insofar as the plea regarding misuse of the blank cheque was concerned, the learned District Judge observed that despite dishonour of the cheque with the remarks “PPS NOT CONFIRMED”, no Complaint regarding alleged misuse of the cheque had ever been lodged by the Appellant. It was accordingly, held that no substantial defence or genuine triable issue had been raised by the Appellant so as to warrant grant of leave to defend, in terms of the Judgment of the Hon’ble Supreme Court in *IDBI Trusteeship Services Ltd. vs. Hubtown Ltd.*, 2017 (1) SCC 568 wherein it was held that where no substantial defence is disclosed, leave to defend is liable to be refused.

32. *The Suit of the Plaintiff was accordingly, decreed.*

33. Insofar as the *plea of fraud* in service was concerned, the learned District Judge held that no *prima facie* case of fraud, had been made out on the facts of the present case and, accordingly, **the Application under Order XXXVII Rule 4 CPC was dismissed.**



34. Aggrieved by the *ex-parte* Judgment and Decree dated 29.08.2024 and the subsequent dismissal of the Application under Order XXXVII Rule 4 CPC, the Appellant has preferred the present Appeal.

35. The *grounds of challenge* are that the material placed on record and the submissions advanced on behalf of the Appellant, have not been appreciated in the correct perspective.

36. It has further been contended that the Suit could not have been decreed without proof of the assertions made in the Plaint and that the report of the Handwriting Expert has been rejected, without due consideration. It has also been contended that the medical condition of the Appellant has not been taken into account, by the learned Trial Court.

37. Further, the learned Trial Court lacked jurisdiction to pass the impugned Judgments and that material irregularities have been committed, resulting in grave miscarriage of justice.

38. It has, therefore, been prayed that *the ex-parte Judgment and Decree dated 29.08.2024 passed in CS DJ No. 315/2024 as well as the Judgment dated 17.10.2025 passed in MISC DJ No. 69/2025 be set aside.*

Submissions heard and record perused.

39. The *ex-parte* Judgment and Decree dated 29.08.2024 passed in CS DJ No. 315/2024 has primarily been assailed on the ground that the Reports regarding service of summons upon the Defendant/Appellant, on 24.04.2024 and 01.07.2024, are incorrect and that summons had never been received by him.

40. A challenge has also been made to the Judgment dated 17.10.2025 passed in MISC DJ No. 69/2025 whereby the Application under Order XXXVII Rule 4 CPC was also dismissed.



41. The learned District Judge has rightly observed that summons had been served upon the Defendant/Appellant on two occasions and, therefore, the plea of the Defendant/Appellant that he had never been served with the summons, was **rightly rejected**.

42. Insofar as the report of the Handwriting Expert is concerned, the same has also been rightly discarded by the learned District Judge on the ground that the opinion of the expert was based upon certified copies and not upon examination of the original record.

43. The learned District Judge has rightly concluded that the Appellant had neither disclosed sufficient cause for setting aside the *ex-parte* Judgment and Decree dated 29.08.2024 nor disclosed such facts as would entitle him to grant of leave to defend, in terms of the principles laid down in *B. L. Gupta vs. Sunita Khanna*, 1994 DLT 56 (585) and *Prabhat vs. Dharmapal*, 2011 SCC OnLine Del 1566.

44. Furthermore, Defendant/Appellant had not denied his signatures on the Cheque, but merely taken a defence that a blank cheque handed over through one Supreet, had been misused. This plea was duly considered and it was observed that *neither the identity of the said Supreet nor his relationship with either the Plaintiff/Respondent or the Defendant/Appellant, was explained*. Accordingly, the allegation of misuse of cheque as raised by the Defendant/Appellant, was rightly rejected.

45. The Appellant had also sought to *raise a plea of fraud*; however, the same was found to be a *bald assertion* unsupported by any particulars or explanation regarding the alleged fraud in the transaction in question.

46. There is no infirmity in the *ex-parte* Judgment and Decree dated 29.08.2024 whereby the Suit under Order XXXVII CPC has been decreed



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on account of failure of the Defendant/Appellant to enter appearance, within the prescribed period.

47. In view of the aforesaid discussion, *the present Appeal is devoid of merit and is hereby, dismissed.*

48. Pending Applications, if any, are disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 12, 2026/R