

**IN THE COURT OF VIKAS DHULL, ADDITIONAL
DISTRICT JUDGE-01, WEST, THC, DELHI**

Civ.DJ No. 562/2019

**Sarvesh Bisaria
S/o Late Sh.S.K.Bisaria
Having office at
113, Lawyer's Chambers
R.K.Jain Block
Supreme Court of India
New Delhi-110001**

... Plaintiff

Versus

**Rajesh Prasad
S/o Mr.Mahesh Prasad
C/o Sun Business Machine Pvt.Ltd.
6/12-A, First Floor
Kirti Nagar, Industrial Area
Kirti Nagar
Delhi-110015**

... Defendant

**Date on which applications received
through email : 22.06.2020
Date on which arguments heard
through Cisco Webex Video
Conferencing and reserved for orders:24.06.2020
Date on which order passed : 25.06.2020**

ORDER



1. Vide this order, I shall dispose of two applications filed by plaintiff i.e. first under Section 148,149 and 151 CPC seeking extension of time to pay the court fees on the application under Order XXXIX Rule 1 and 2 CPC and the second application under Order XXXIX Rule 1 and 2 CPC praying for interim injunction.

2. First, I shall take up the application under Section 148,149 and 151 CPC.

3. Having regard to the pandemic and courts being in lockdown state, **the application filed is allowed** and plaintiff is directed to pay the appropriate court fees on the interim injunction application as and when court reopens. **The application stands disposed of.**

4. Regarding the application under Order XXXIX Rule 1 and 2 CPC, the facts which are relevant for deciding the said application are that plaintiff had filed a suit under Order XXXVII CPC for recovery of Rs.74 Lacs with interest against

defendant.

5. In the said suit, it was averred that mother of plaintiff was the owner of house no. D-83, Gulmohar Park, New Delhi which was sold and after selling the same, mother of plaintiff had made a gift to the plaintiff.

6. It was further averred that defendant and plaintiff are known to each other for the past 40 years and have good relations between each other.

7. It was also averred that on the request of defendant, plaintiff had advanced a sum of Rs.50 Lacs in cash to the defendant on 29.01.2016 from the amount received as gift from his mother and in consideration of the same, defendant had executed a promissory note dated 29.01.2016.

8. It was further averred that thereafter, defendant continued to pay interest till 2017 but thereafter, he stopped paying the interest and on persistent demands made by plaintiff, defendant

had issued a cheque of Rs.50 Lacs. However, the same was dishonoured due to reason” payment stopped by the drawer”. Accordingly, plaintiff had filed the present suit under Order XXXVII CPC seeking the cheque amount of Rs.50 Lacs as well as interest based upon the promissory note i.e. total amount of Rs.74 Lacs with interest.

9. Defendant was served with the summons for appearance and after he had filed his appearance, he was served with the summons for judgment and accordingly, defendant had also filed on record his leave to defend application under Order XXXVII CPC.

10. A detailed reply was filed by plaintiff to the said application of defendant and part arguments were also heard on the defendant's leave to defend application. However, before the arguments could be concluded, the lock down was imposed and therefore, the application of defendant for leave to defend is still pending disposal.



11. In the meanwhile, the present application has been filed by plaintiff wherein it is stated by plaintiff that he has come to know from reliable sources that defendant is in the process of selling of his immovable assets and disposing of his movable assets and accordingly, he has made a prayer that defendant be restrained from selling his immovable properties as detailed out in the application and further, directions have been sought for freezing of bank accounts of defendant.

12. Notice of the said application was issued to defendant, who on being served chose not to file any reply.

13. I have heard plaintiff in person and Sh.Amit Bhalla, Ld.counsel for defendant. I have also carefully perused the material on record.

14. It was submitted by plaintiff that he has a strong case on merits. It was submitted in this regard that defendant had executed a promissory note and a cheque and the execution of same has not been disputed by the defendant in his leave to



defend application and, therefore, these documents establish on record the liability of defendant in favour of plaintiff.

15. It was further submitted that the contention of defendant that he had executed blank signed documents carries no force and as per Section 118 and 139 of the Negotiable Instruments Act, 1881, there is a presumption regarding existence of liability.

16. It was further submitted that Punjab Money Lenders Act, 1938 is not applicable to plaintiff as there is no averment made in the entire leave to defend application that plaintiff was in the business of money lending. It was submitted that since defendant is in the process of selling off his assets, then it would be very difficult for the plaintiff to execute a decree against defendant. Accordingly, it was prayed that his application for interim injunction be allowed.

17. On the other hand, it was submitted by ld.counsel for defendant that there is no prima



facie case in favour of plaintiff for grant of interim injunction.

18. It was submitted that in the entire application, no cause of action has been disclosed which makes out a case for grant of interim injunction.

19. It was submitted that it was vaguely submitted by plaintiff that he has learnt from reliable sources that defendant is in the process of selling his assets without disclosing the reliable source of information or the name of the buyer with whom defendant has entered into any agreement to sell to sell the property.

20. Even no documents have been filed on record by plaintiff in support of his plea that defendant is in the process of selling of his assets. Therefore, the present application has been filed without disclosing any cause of action. Hence, the same deserves to be dismissed on this ground itself.

21. Secondly, it was submitted that plaintiff

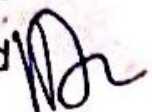


has not disclosed his source of income in cash in the entire plaint and the defence of defendant is that no loan was advanced in cash by plaintiff to defendant and since plaintiff was the counsel for the defendant in various cases, therefore, in good faith, certain signed documents were obtained in blank by plaintiff which have been misused in the present case.

22. It was further submitted that when defendant had got the knowledge about misuse of documents i.e. cheque, then defendant had taken immediate step to stop encashment of cheque by issuing "stop payment instructions" to his banker.


23. It was further submitted that in the present case, sale deed and the gift deed executed by mother of plaintiff and the alleged promissory note executed by defendant are of the same date i.e. 29.01.2016.

24. It was further submitted that the source of income of plaintiff was the sale proceeds received by his mother but if the sale deed and



the gift deed dated 29.01.2016 are perused, then they reflect that no such transaction had taken place in cash by mother of plaintiff and all payment was received by her through cheque.

25. It was further submitted that there was no question of cheque being encashed on 29.01.2016 itself and, therefore, the story cooked up by the plaintiff that he had received cash from his mother through a gift deed which he had advanced to the defendant, is prima facie not believable. Therefore, there is no prima facie case in favour of plaintiff for grant of interim injunction.

26. Lastly, it was submitted that suit of plaintiff is also barred by provisions of Punjab Money Lenders Act, 1938 which is applicable to Delhi also as plaintiff is in the money lending business and he is not having any license to do such kind of business. Therefore, the present suit for recovery is barred under Punjab Money Lenders Act, 1938. 

27. It was further submitted that apart from defendant, plaintiff had extended loan to two other persons of similar amount of Rs.50 Lacs and the said suits are also pending before this court.

28. It was further submitted that extending of loan to three different persons on interest prima facie shows that plaintiff is in the business of money lending and since he is not having any licence to do this business, therefore, the suit of plaintiff is not maintainable. Accordingly, it was concluded that there is no prima facie case in favour of plaintiff for grant of interim injunction and the prayer was made to dismiss the application of plaintiff.

29. I have considered the rival submissions of respective parties and have carefully perused the record.

30. The contentions being raised are similar to the one which have been raised in the leave to defend application of the defendant.

31. Further, since leave to defend



application of defendant is still pending disposal, therefore, it will not be appropriate for this court to give a finding on the merits of the contentions raised by respective parties.

32. However, this court agrees with the contention of the Id.counsel for defendant that the application filed by plaintiff is not disclosing any cause of action to file the present application and the plaintiff has vaguely submitted in the application that he has leant from reliable sources that defendant is in the process of selling off his assets both movable and immovable. However, what was the reliable source has not been disclosed.

33. Even the nature of documents executed by defendant to liquidate his assets has not been disclosed nor even the name of the purchaser has been disclosed.

34. Further, on which date, the defendant had entered into an alleged transaction of making an offer of selling his property has not been

disclosed. Therefore, the application filed by plaintiff is not disclosing any cause of action to file the same. Hence, on this ground itself, the application deserves to be dismissed.

35. Secondly, the case of plaintiff is that he has given the cash amount of Rs.50 Lacs to defendant on the basis of gift deed executed by his mother.

36. I have perused the sale deed and the gift deed executed by mother of plaintiff both dated 29.01.2016 and from the same, it is prima facie evident that no cash transaction had ever taken place and all the payment was received by mother of the plaintiff through cheque. Therefore, there is no prima facie material on record to show that plaintiff had received any amount in cash from his mother which he could have advanced to the defendant. Therefore, **the application filed by plaintiff deserves to be dismissed as firstly, the same is not disclosing any cause of action and secondly, there is no prima facie case**

existing in favour of plaintiff. The application filed is, accordingly dismissed.

37. Nothing expressed herein shall tantamount to expression of any opinion on the merits of this case.



**(Vikas Dhull)
ADJ-01, WEST
THC, DELHI
25.06.2020**

**IN THE COURT OF VIKAS DHULL, ADDITIONAL
DISTRICT JUDGE-01, WEST, THC, DELHI**

**Civ.DJ No. 562/2019
Sarvesh Bisaria Vs. Rajesh Prasad**

25.06.2020 (4.00 p.m.)

Pr: None.

Vide separate order passed today, the application under Section 148, 149 and 151 CPC is allowed and the application under Order XXXIX Rule 1 and 2 CPC is dismissed.

Put up on the date fixed for further arguments on the leave to defend application of defendant.

A copy of order be sent to the plaintiff as well as to the ld.counsel for defendant through email/whatsapp.


**(Vikas Dhull)
ADJ-01, WEST
THC, DELHI
25.06.2020**