

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

+ **CS(OS) No. 2373/2001**

% **11th October, 2012**

FMI INVESTMENT P. LTD.

..... Plaintiff

Through: Mr. Dinesh Kumar and Mr. Vikas Mishra,
Advocates.

VERSUS

MONTARI INDUSTRIES LTD. AND ANR.

..... Defendants

Through: Mr. Anil Airi , Ms. Sadhna Sharma and Mr.
Ravi Krishan Chandra, Advocates for D-2.
Mr. B.V.Niren, CGSC, for respondent/UOI.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. On 10.9.2012, the following order was passed:-

- “1. Though there is no ground for adjournment in the present suit in which the application for leave to defend is listed, however, since the counsel for the defendant is stated to be not well and not appearing in any court, list on 11th October, 2012.
2. It is made clear that no adjournment shall be granted on the next date of hearing.”

2. Today, counsel appearing for defendant no.2 states that the defendant

no.1 company, and which is the principal borrower, is a sick company and

therefore, the present suit cannot proceed. Attention of this Court is invited to the
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order dated 12.2.2008, as per which, the suit had to be heard qua the maintainability in view of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short SICA).

3. The issue as to continuation of a suit filed against a sick company is no longer *res integra* and is fully covered by two recent judgments one of the Division Bench of this Court in the case of ***Sakethh India Ltd. Vs W. Diamond 2010 (119) DRJ 190; 2010 (160) CC 562*** and second is the judgment of the Supreme Court in the case of ***Raheja Universal Ltd. Vs. NRC Ltd. (2012) 4 SCC 148.***

4. The ratio of the judgment in ***Saketh India Ltd.'s (supra)*** case is that unless the dues are admitted by the sick company in a sanctioned scheme or is admitted before the Court where the same suit is filed, no permission is required under Section 22 of SICA. More particularly it is held that before Section 22 applies the proceedings have to be in the nature of 'execution, distress or the like'.

Paras 6 and 14 of the said judgment are as under:-

“6. Courts, however, have always been alive to the possible mischief that invocation of SICA can lead to. In a nutshell, where the net worth of a company is reduced to a negative, and the amelioration that is sought is for reviving the company rather than winding it up, the recourse to the Act would be legitimate. There is no justifiable reason, therefore, for all legal proceedings to be immediately even held in abeyance, if not dismissed. We are mindful of the fact that Parliament has incorporated an amendment in the Section with effect from 1.2.1994 in these words - "no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee

in respect of any loans or advance granted to the industrial company - shall lie or be proceeded with further, except with the consent of the Board, or as the case may be, the Appellate Authority". It appears to us that the phrase "recovery of money" must be construed ejusdem generis and accordingly recovery proceedings in the nature of execution or any other coercive enforcement that has been ordained to be not maintainable. We do not find any logic in holding legal proceedings to be not maintainable, or to be liable to be halted unless, even if the debt sought to be proved in the Plaint has not been admitted. Given the delays presently endemic in the justice delivery system if a creditor is disallowed even from proving the indebtedness of a recalcitrant debtor SICA company, it would cause unjustified hardship. Whichever way we look at the matter, there can be no logic in denying legal recourse to a party for proving its debt. In the event that at least the principal amount, or a substantial part of it stands admitted, either in the suit or by means of a mention in the Scheme placed before the BIFR, the aggrieved party must be permitted to prove its claim. In holding so, the only prejudice that we can conceive of is incurring expenditure in legal fees. When this is weighed against the interests of a person claiming that the company is indebted to it, the balance tilts in favour of the latter. A holistic reading of Section 22(1) of SICA makes it manifestly clear that Parliament's intention was to insulate sick companies only against proceedings for winding-up or for execution, or distress or the like or for enforcement of any security or guarantee. In the case in hand, despite several opportunities granted to the Appellant, it has miserably and perhaps deliberately failed to substantiate that the claim mentioned in the Suit has been reflected in the Scheme placed before the BIFR but even more poignantly, that a scheme was, in fact, pending before BIFR. If an Appeal is pending, has BIFR failed to grant or has withdrawn registration under SICA. We see the conduct of the Appellant as nothing more than an abuse of SICA.

14. The discussion contained above leads to the thesis that as soon as a claim stands admitted, either because it has been reflected in the Scheme, or because it stands favourably adjudicated in a Court of law, the protection of Section 22 of SICA would automatically have to be implemented. This is the watershed between the present and the preceding case. Having obtained a decree, further proceedings fall within the protective mantle of Section 22 of SCIA as they cannot but be in the nature of "execution, distress or the like". A plain reading of the provision cannot but lead to any other conclusion. If there are unique circumstances, which would justify the execution of the decree, even in the face of the registration of a Scheme under SICA, the proper recourse possible would be to obtain the permission or consent of the Board or the Appellate Authority as the case may be. Any other interpretation would completely annihilate and defeat the intendment of Parliament." (underlining added)

In view of the judgment of the Division Bench in the case of *Saketh India Ltd. (supra)*, it is quite clear that no permission is required under Section 22 of SICA to continue with the present suit inasmuch as it has not been pointed out to me as to how dues in the subject suit are admitted by the defendant No.1 in the present suit.

5. In fact now the controversy as to the interpretation of Section 22 is set at rest by the recent judgment of the Supreme Court rendered by a Division Bench of three Judges in the case of *Raheja Universal Ltd. Vs. NRC Ltd., 2012 (4) SCC 148*. The relevant paras of this judgment are paras 55, 58, 61 and 76 to 81, which read as under:-

“55. Despite these judgments and with an intention to clarify the law, we would state that the matters which are connected with the sanctioning and implementation of the scheme right from the date on which it is presented or the date from which the scheme is made effective, whichever is earlier, would be the matters which squarely fall within the ambit and scope of Section [22](#) of the Act of 1989 subject to their satisfying the ingredients stated under that provision. This would include the proceedings before the civil court, revenue authorities and/or any other competent forum in the form of execution or distress in relation to recovery of amount by sale or otherwise of the assets of the sick industrial company. It is difficult for us to hold that merely because a demand by a creditor had not been made a part of the scheme, pre or post-sanctioning of the same for that reason alone, it would fall outside the ambit of protection of Section [22](#) of the Act of 1985.

58. Section [22](#) is the reservoir of the statutory powers empowering the BIFR to determine a scheme, right from its presentation

till its complete implementation in accordance with law, free of interjections and interference from other judicial processes. Section 22(1) deals with the execution, distress or the like proceedings against the company's properties, including appointment of a Receiver. It also specifically provides that even a winding up petition would not be instituted and no other proceedings shall lie or proceed further, except with the consent of the BIFR.

61. It can safely be perceived that the provisions of Section 22 of the Act of 1985 are self-explanatory. They would cease to operate within their own limitations and not by force of any other law, agreement, memorandum or even articles of association of the company. The purpose is so very clear that during the examination, finalization and implementation of the scheme, there should be no impediment caused to the smooth execution of the scheme of revival of the sick industrial company. It is only when the specified period of restrictions and declarations contemplated under the provisions of the Act of 1985 is over, that the status quo ante as it existed at the time of the consideration and finalization of the scheme, would become operative. This is done primarily with the object that the assets of the company are not diverted, wasted, taken away and/or disposed of in any manner, during the relevant period.

76. On the analytical analysis of the above-stated dictum of this Court and the legislative purpose and object of the Act, it has to be held that on its plain reading the provisions of Sections 22(1) and 22(3) of the Act are the provisions of wide connotation and would normally bring the specified proceedings, contractual and non-contractual liabilities, within the ambit and scope of the bar and restrictions contained in Sections 22(1) and 22(3) of the Act of 1985 respectively. The legislative intent is explicit that the BIFR has wide powers to impose restrictions in the form of declaration and even prohibitory/injunctive orders right from the stage of consideration of a scheme till its successful implementation within the ambit and scope of Sections 22(3) and 22A of the Act.

77. Section [22](#) of the Act of 1985 is very significant and of wide ramifications and application. More often than not, the jurisdiction of the BIFR is being invoked, necessitated by varied actions of third parties against the sick industrial company. The proceedings, taken by way of execution, distress or the like, may have the effect of destabilizing the finalization and/or implementation of the scheme of revival under consideration of the BIFR. It appears that, the Legislature intended to ensure that no impediments are created to obstruct the finalization of the scheme by the specialized body. To protect the industrial growth and to ensure revival, this preventive provision has been enacted. The provision has an overriding effect as it contains non obstante clauses not only vis--vis the Companies Act but even qua any other law, even the memorandum and articles of association of the industrial company and/or any other instrument having effect under any other Act or law. These proceedings cannot be permitted to be taken out or continued without the consent of the BIFR or the AAIFR, as the case may be.

78. The expression 'no proceedings' that finds place in Section [22\(1\)](#) is of wide spectrum but is certainly not free of exceptions. The framers of law have given a definite meaning to the expression 'proceedings' appearing under Section [22\(1\)](#) of the Act of 1985. These proceedings are for winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a Receiver in respect thereof.

79. The expression 'the like' has to be read ejusdem generis to the term 'proceedings'. The words 'execution, distress or the like' have a definite connotation. These proceedings can have the effect of nullifying or obstructing the sanctioning or implementation of the revival scheme, as contemplated under the provisions of the Act of 1985. This is what is required to be avoided for effective implementation of the scheme. The other facet of the same Section is that, no suit for recovery of money, or for enforcement of any security against the industrial company, or any guarantee in respect of any loan or advance granted to the industrial company shall lie, or be proceeded with further without the consent of the

BIFR. In other words, a suit for recovery and/or for the stated kind of reliefs cannot lie or be proceeded further without the leave of the BIFR. Again, the intention is to protect the properties/assets of the sick industrial company, which is the subject matter of the scheme.

80. It is difficult to state with precision the principle that would uniformly apply to all the proceedings/suits falling under Section 22(1) of the Act of 1985. Firstly, it will depend upon the facts and circumstances of a given case, it must satisfy the ingredients of Section 22(1) and fall under any of the various classes of proceedings stated thereunder. Secondly, these proceedings should have the impact of interfering with the formulation, consideration, finalization or implementation of the scheme.

81. Once these ingredients are satisfied, normally the bar or limitation contained in Section 22(1) of the Act of 1985 would apply. For instance, execution of a decree against the assets of a company, if permitted, is bound to result in disturbing the scheme, which has or may be framed by the BIFR. The sale of an asset during such execution or even withdrawing the money from the bank account of the company would certainly defeat the very purpose of the protection sought to be created by the Legislature under Section 22(1) of the Act of 1985.” (underlining added)

6. The salient conclusions which can be arrived at from reading of the aforesaid paras in the case of ***Raheja Universal (supra)*** are :-

(i) The proceedings which are affected by Section 22(1) are proceedings in the nature of execution, distress or the like.

(ii) It depends on facts of each case as to whether the suit is hit by Section 22 i.e all suits including of recovery, are not hit by Section 22(1).

(iii) Only those suits which have the effect of execution, distress or like action against the properties of the sick company are hit by Section 22 i.e where a suit is simply for recovery of moneys, and the properties of a sick company are not threatened by the proceedings including interim proceedings such as appointment of receiver, execution, distress or the like, such suits can continue without permission under Section 22.

7. Learned counsel for the defendant no.2 sought to place reliance on the following three judgments to argue that permission under Section 22 is a *sine qua non*.

- (i) ***Managing Director, Bhoruka Textiles Ltd. Vs. Kashmiri Rice Industries (2009) 7 SCC 521;***
- (ii) ***Tata Davy Ltd. Vs. State of Orissa and Ors (1997) 6 SCC 669;***
- (iii) ***Dr. B.K.Modi Vs. M/s Morgan Securities and Credits Pvt. Ltd. and M/s Morgan Securities and Credits Pvt. Ltd. Vs. Dr. B.K.Modi MANU/DE/2779/2012***

8. In my opinion, all the three judgments, which have been cited on behalf of defendant no.2 have no application because the legal position is sufficiently elaborated by the Supreme Court in the judgment of ***Raheja Universal (supra)***.

9. None of the aforesaid judgments cited on behalf of defendant no.2 deal with the issue of interpretation of Section 22 of SICA as has been done by the Division Bench of three Judges in the case of ***Raheja Universal (supra)*** and

which holds that unless the suit proceedings are in the nature of ‘execution, distress or the like’, the suit can continue. The judgments relied upon by the defendant no.2 are judgments which simply hold that once a company is a sick company, permission is required under Section 22 of the SICA, however, none of the judgments cited on behalf of the defendant no.2 deal with the proposition as incorporated in the later judgment of the Division Bench of three Judges of the Supreme Court of in the case of ***Raheja Universal (supra)***. Accordingly, it is held that the suit is maintainable.

10. In the present suit for recovery it cannot be said that the suit is of a nature which has impact of or threat to the properties of the defendant No.1 sick company to affect the scheme of revival. The suit is a simple suit for recovery under Order 37 CPC not having proceedings, whether interim or final, of execution, distress or the like and hence the suit is not hit by Section 22 of SICA. So far as defendant No.2/guarantor is concerned, the suit against him will not surely hit any assets of the sick company and hence is not barred under Section 22 of SICA.

I.A.No.8605/2003 (leave to defend by D-1)

11. This is an application filed by defendant no.1-company seeking leave to defend. I have already passed an order today that the suit has to continue and no permission is required under Section 22 of the SICA in view of the Division Bench CS(OS) 2373/2001

judgment of this Court in the case of *Saketh India Ltd (supra)* and more importantly of the Supreme Court in *Raheja Universal's* case. The only defence which is raised in the application for leave to defend by defendant no.1 is that it is a sick company. There is no credible denial of the dues which are payable under the subject suit. The relevant paras of this leave to defend application are paras 3 to 13 and which only talk of defendant no.1-company being a sick company or with respect to prior proceedings under Section 138 of the Negotiable Instrument Act, 1881 or allegedly that of all material documents having been suppressed from the record. The defence is therefore quite clearly only a moonshine, and since as already stated above, Section 22 of SICA does not apply, the application for leave to defend is dismissed and the suit is decreed against the defendant no.1 for the reasons given hereinafter. I may however clarify that for execution of the decree or like proceedings against defendant No.1 prior permission will have to be taken under Section 22 of SICA.

12. The subject suit has been filed by the plaintiff for recovery of ₹ 1,46,95,206/- and which amount comprises of the principal amount of ₹ 65 lacs and the balance is interest thereon. The suit amount is the liquidated amount arising out of the written agreement dated 17.11.1998. In fact, the agreement dated 17.11.1998 is preceded by the initial/original transaction of grant of Inter-

Corporate Deposit/Loan on 28.7.1994 of ₹ 1,00,00,000/- to the defendant no.1 alongwith interest.

13. I have already referred to the stand of the defendant no.1 in the leave to defend application and which is in fact a pure moonshine because on merits the only thing which is averred is that the plaintiff has concealed documents and what are the documents allegedly concealed is not stated. There is no denial of the merits of the matter as stated in the plaint that the defendant no.1 executed the agreement dated 17.11.1998, and which binds the defendant no.1 to pay the amount of ₹ 65,00,000 plus interest.

14. However, I am not inclined to grant the extremely high rate of interest at 25% per annum simple as claimed by the plaintiff. In Delhi, interest on a loan transaction is governed by Usurious Loans Act, 1918 as amended by the Punjab Relief of Indebtedness Act, 1934. As per this amendment of the Usurious Loans Act, as applicable to Delhi, the rates of interest which can be charged by a lender are at two different rates. One rate is when the debt is a secured debt and another is when the debt is unsecured. For secured debt, interest at 7 ½% per annum simple will be payable whereas for the unsecured debt interest at 12 ½% per annum simple is payable-vide Section 3(i)(e) of the Act. In the present case, since the debt is an unsecured debt, interest at 12 ½ % will be payable. Plaintiff cannot therefore be allowed interest at 25% per annum simple in view of the aforesaid

provision of Usurious Loans Act. I may state that plaintiff is not a banking company or other notified company as per the Usurious Loans Act and hence not exempted from application of the provisions of Usurious Loans Act as applicable to Delhi and therefore the contractual rate of interest cannot prevail in the face of the statute.

15. The suit of the plaintiff is hence decreed for a sum of ₹ 65,00,000/- alongwith interest at 12 ½% per annum simple from 17.11.1998 till the date of filing of the suit. Plaintiff will also be entitled to the same rate of 12 ½% per annum simple interest pendente lite and future till realization of the decretal amount. Plaintiff is entitled to costs in terms of the Rules of the Court against the defendant no.1.

I.A.No.1288/2003 (Leave to defend by D-2).

16. This is an application filed by the defendant no.2 seeking leave to defend. The application is almost identically worded as is the application of defendant no.1 seeking leave to defend, and which has been dismissed above. The only additional aspect that the defendant no.2 has contended is that there is no personal guarantee which has been executed by the defendant no.2, and, therefore, defendant no.2 cannot be made liable to pay the amount as claimed in the present suit. I may note that there is no denial of the fact that the agreement dated

17.11.1998 was executed in favour of the plaintiff. When we look at the
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agreement dated 17.11.1998 executed by defendant No.2 who is the Managing Director of defendant No.1 in favour of the plaintiff, we find that the same contains the following Clause 4:

“4. It is also agreed that Bhai Manjit Singh being the Promoter and Managing Director of THE PARTY OF THE SECOND PART (Montari Industries Ltd) has in his personal capacity agreed and guaranteed the payment of Rs.67,00,000/-(Rupees sixty seven lacs) being the principal amount of loan to the party of the FIRST Part and has also agreed to take over the liability from Montari Industries Ltd in his personal capacity and has agreed to pay the principal amount of loan to the Party of the FIRST PART as per the agreed schedule.”

17. The aforesaid agreement dated 17.11.1998 is signed by the defendant no.2. The signatures of the defendant no.2 Bhai Manjit Singh have not been put alongwith the stamp and seal of the defendant no.1 company thus showing that the signatures of Bhai Manjit Singh-defendant no.2 are not only for and on behalf of defendant no.1-company, the signatures are in his personal capacity as well.

18. In my opinion, a reading of the aforesaid para 4 leaves no manner of doubt that for the liability of the defendant no.1 company, who was the principal borrower, the defendant no.2 stood as a guarantor for payment of the principal amount of the loan of ₹ 65 lacs.

19. Learned counsel for the defendant no.2 relied upon two judgments in support of the grant of leave to defend, the first judgment is in the case of ***Mrs. Raj***

Duggal Vs. Ramesh Kumar Bansal AIR 1990 SC 2218 and the second is of learned Single Judge of this Court in the case of ***Steel Authority of India Ltd. Vs. Century Tubes Ltd. Ors. 121 (2005) DLT 122.***

20. The judgment in the case of ***Mrs. Raj Duggal (supra)*** is relied upon for the proposition that there is a triable issue if there is a fair dispute to be tried as regards the meaning of the document. In my opinion, this judgment in the case of ***Mrs. Raj Duggal (supra)*** can have no application to the facts of the present case inasmuch as, Clause 4 of the agreement dated 17.11.1998 is more than clear. Seeking to raise baseless technical interpretation, to avoid payment of dues, should not be countenanced by Courts of law and hence I hold that there can be no doubt as to the language and interpretation of clause 4 which categorically says that defendant No.2 is a guarantor and liable for dues payable of the defendant No.1. Clause-4 of the agreement dated 17.11.1998, even if it is given only a cursory reading, yet the same leaves no manner of doubt as regards the liability of the defendant no.2 as a guarantor for payment of the dues of the defendant no.1/principal borrower. Clause-4 specifically uses the expressions “guaranteed the payment” i.e the defendant no.2 is a guarantor.

21. So far as the judgment in the case of ***Steel Authority of India Ltd.(supra)*** is concerned, it is relied upon for the proposition that there must be sufficient averments in the plaint to fasten liability upon a particular person as a

guarantor. Once again, the judgment of *Steel Authority of India Ltd.(supra)* does not apply to the facts of the present case inasmuch as, plaint in the present case clearly makes out averments of the fact that defendant no.2 is liable. The fact that there is a defaulted payment under the agreement dated 17.11.1998 by the defendant no.1, and therefore there is liability of both the defendant nos.1 and 2 is quite clearly averred in paras 11,12,14,15,16 and 19 of the suit plaint, and the same read as under:-

“11. That during the pendency of the above mentioned Cr. M. (Main) No. 2220/1997 FMI Investments Pvt. Ltd. Vs. State & Others, the defendant no.2 as Managing Director of Defendant No.21 approached the plaintiff and both the parties entered into an amicable settlement vide agreement dated 17th November, 1998 whereby the defendants acknowledged and admitted the amount of Rs.67,00,000/- (Rupees Sixty seven lakhs only) and repayment schedule was made for the repayment of the said amount in four instalments. The schedule for repayment of the said was made as follows:-

Repayment date on or before:	Amount.
17.11.1998	Rs. 20,00,000/-
17.5.1999	Rs.15,00,000/-
17.11.1999	Rs.15,00,000/-
17.5.2000	Rs.17,00,000/-

The said agreement dated 17.11.1998 was duly signed by the Plaintiff as first party and the defendant No.1 through defendant No.2 as second party. Accordingly, defendants paid a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) vide Demand Draft No. 779388 dated 17.11.1998 drawn on Grindlays Bank, New Delhi which was got encashed on 19.11.1998, towards the repayment of the said amounts as first instalment as per the said agreement dated 17.11.1998.

12. That vide Clause 4 of the said agreement dated 17.11.1998 it was also agreed that Bhai Manjit Singh defendant No.2 being the Promoter and Managing Director of defendant No.1 has, in his personal capacity, agreed and guaranteed the repayment of Rs.67,00,000/- (Rupees Sixty seven Lakhs only) being the Principal amount of ICD loan to the plaintiff and has also agreed to take over the liability from Montari Industries Ltd. in his personal capacity as well as has agreed to pay the principal amount of loan to the plaintiff as per agreed schedule. The said Clause 4 of the said agreement dated 17.11.1998 is reproduced below for ready reference:-

“4. It is also agreed that Bhai Manjit Singh being the promoter and Managing Director of the Party of the Second part (Montari Industries Ltd.) has in his personal capacity agreed and guaranteed the payment of Rs.67,00,000/-(Rupees Sixty seven lakhs) being the principal amount of loan to the party of the First Part and has also agreed to take over the liability from Montari Industries Ltd. in his personal capacity and has agreed to pay the Principal amount of loan to the Party of the First Part as per the agreed schedule.”

14. That as per the terms and conditions of the said agreement, defendants paid a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) on 17.11.1998 by Demand draft which was got encashed on 19.11.1998 towards the repayment of the said amounts but failed and neglected to pay the balance amounts as per schedule/Annexure A of the said agreement dated 17.11.1998, as such the plaintiff is entitled to recover the entire amounts of debts and liabilities towards principal and interest as per the original ICD loan.

15. That the plaintiff sent various letters to the defendants and made demands but the defendants failed and neglected to pay the same. Defendant No.2 as Managing Director of Defendant No.1 also made promise that he is going to sell the property No.61, Golf Links, New Delhi to some prospective buyer and on receipt of the sale consideration or part thereof he will make the payment to the plaintiff but he again failed and neglected to pay the same. Defendant No.2 has already entered into an agreement to sell the said property for a sum of Rs.8.25 Crores and has received substantial amounts as part payment from the purchasers M/s Senior Builders Pvt. Ltd. New Delhi but so far has not paid the dues of the plaintiff.

16. That as per clause 4 of the said agreement dated 17.11.1998, defendant No.2 in his personal capacity as well as liable to pay the entire amounts due to the plaintiff.

19. That the suit is based on the written contract/agreement entered into between the parties on 17.11.1998. The said written contract/agreement came out of the ICD loan granted by the plaintiff to the defendants as mentioned above and defendant no.2 in his personal capacity not only admitted and acknowledged the said debts and liabilities payable to the plaintiff but also agreed/guaranteed to pay in terms of the I.C.D.loan.”

22. In my opinion, the aforesaid paras surely are more than sufficient to show the liability of the defendant no.1 as the principal borrower and the defendant no.2 as guarantor. The triable issues in law which entitle leave to defend are only bona fide triable issues. On every disputed question of fact an issue has to be framed, but, it is only a bona fide triable issue which entitles leave to defend. In my opinion, mere technical defences, and which of course are also without any basis in view of the categorical language of the agreement dated 17.11.1998, read with the averments in the plaint, shows that there does not arise a triable issue entitling leave to defend. The issues raised in the leave to defend application are only moonshine and do not entitle the defendant no.2 for leave to defend.

23. Even qua the defendant no.2 the observations with respect to the interest not being granted at 25%, as has been observed so far as the defendant no.1, also squarely applies and therefore, even against the defendant no.2, the decree will only be for a sum of ₹ 65 lacs along with interest at 12 ½ % per annum

simple pendente lie and future till realization of the decretal amount. Plaintiff is entitled to costs in terms of the Rules of the Court against the defendant no.2.

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24. Since the leave to defend applications are dismissed, suit will stand decreed in terms of the observations made above. Decree sheet be prepared making it clear that the liability of the defendant nos. 1 and 2 is joint and several with respect to the entire decretal amount.

25. Since the suit is disposed of all pending applications do not survive and accordingly stand disposed of as such, preserving any rights, if granted for the deposit of the amount in this Court.

OCTOBER 11, 2012
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VALMIKI J. MEHTA, J.