

Sl. No. 10-12

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRP(CRP Art. 227) No. 25 of 2025

M/S Bharatia Infra Projects Limited and Another

Petitioners

Vs.

Phurailatpam Jilasana Sharma

Respondent

***Clubbed with MC(CRP(C.R.P. Art. 227)) 34 of 2025
With MC(CRP(C.R.P. Art. 227)) No. 38 of 2025***

BEFORE
HON'BLE THE CHIEF JUSTICE MR. M. SUNDAR

ORDER

03.10.2025

[1] A summary suit under Order XXXVII of 'the Code of Civil Procedure, 1908' ('CPC' for the sake of brevity) was filed by the respondent in the captioned CRP.

[2] This suit is Original (Money) Suit No. 112 of 2022 on the file of learned 'Civil Judge (Senior Division), Imphal West' ('said trial court' for the sake of brevity and convenience). The two revision petitioners before this Court are the two defendants in the suit. This suit shall be referred to as 'summary suit' for the sake of convenience and clarity.

[3] In the said summary suit, a sum of a little over Rs. 9.15 cores (Rs. 9,15,22,678/- to be precise) was claimed.

[4] The revision petitioners before this Court who are defendants in the said summary suit took out an application in Judicial Miscellaneous Case No. 170 of 2023 with a leave to defend prayer. This leave to defend application was dismissed by the trial court by a short order saying that the court is unable to understand and appreciate the pleadings and is unable to understand what the defendants are trying to convey.

[5] Ms. H. Bandana, learned counsel for the revision petitioner (defendants before the trial court) and Mr. N. Jotendro, learned senior counsel instructed by Mr. Syed Murtaza Ahmed, learned counsel for the sole respondent (plaintiff in the trial court) are before this Court.

[6] Captioned matter was taken up with the consent of both sides.

[7] A careful perusal of the leave to defend application under Order XXXVII Rule 3 (5) brings to light that the defendants have raised very many points such as blank papers having been signed. This court refrains itself from dilating further over details and further deems it appropriate to write that this Court has not expressed any view or opinion on the points raised in the leave to defend application, owing to the order that is proposed to be made about which there will be allusion infra.

[8] Be that as it may, the point that the defendants signed in blank papers is a defence which needs to be examined. The examination in a leave to defend application is to see whether the same is a moonshine defence and as to whether it raises triable issues or not.

[9] In this regard, this Court deems it appropriate to respectfully refer to **Mechelec Engineers And Manufacturers vs M/S. Basic Equipment Corporation** reported in **AIR 1977 SC 577 :: (1976) 4 SCC 687**, where five parameters/tests *qua* leave to defend applications in summary suits was set out. Subsequently, vide **IDBI** judgment reported in **(2017) 1 SCC 568** the same was superseded and in **Kashyap** this supersession was held to be modulation and Hon'ble Supreme Court made it clear that core theme is denial of leave to defend is an exception. To be noted, **IDBI** turns on amendment to Order XXXVII Rule 3 and **Kashyap** has been reported in **(2022) 3 SCC 294**. Articulation of all this is in paragraphs 32 and 33 of **Kashyap** and the same read as follows :

*"32. The High Court took note of the fact that the trial court relied upon the decision in **Mechelec Engineers** and observed that the applicable principles were those contained in the later decision of this Court in **IDBI Trusteeship**. Having regard to the question at hand, it shall be worthwhile to read together the principles stated in the said two decisions of this Court.*

*32.1. In the case of **Mechelec Engineers**, the principles for consideration of a prayer for leave to defend in a summary suit were laid down by this Court in the following terms: -*

*"8. In **Kiranmoyee Dassi Smt v. Dr J. Chatterjee** [AIR 1949 Cal 479 :49 CWN 246, 253 : ILR (1945) 2 Cal 145.] Das, J., after a comprehensive review of authorities on the subject, stated the principles*

applicable to cases covered by Order 17 CPC in the form of the following propositions :

‘.....(a) If the defendant satisfies the court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend, but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security.

(d) If the defendant has no defence or the defence set-up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although

ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence.”

*32.2. In the case of **IDBI Trusteeship** (supra), this Court modulated the aforementioned principles and laid down as follows: -*

*“17. Accordingly, the principles stated in para 8 of **Mechelec case** will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in **Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36J**, as follows:*

17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.

17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.

17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial

Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.

17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.”

(emphasis in original)

*33. It is at once clear that even though in the case of **IDBI Trusteeship**, this Court has observed that the principles stated in paragraph 8 of **Mechelec Engineers** case shall stand superseded in the wake of amendment of Rule 3 of Order XXXVII but, on the core theme, the principles remain the same that grant of leave to defend (with or without conditions) is the ordinary rule; and denial of leave to defend is an exception. Putting it in other words, generally, the prayer for leave to defend is to be denied in such cases where the defendant has practically no defence and is unable to give out even a semblance of triable issues before the Court.*

33.1. As noticed, if the defendant satisfies the Court that he has substantial defence, i.e., a defence which is likely to succeed, he is entitled to unconditional leave to defend. In the second eventuality, where the defendant raises triable issues indicating a fair or bonafide or reasonable defence, albeit not a positively good defence, he would be ordinarily entitled to unconditional leave to defend. In the third eventuality, where the defendant raises triable issues, but it remains doubtful if the defendant is raising the same in good faith or about genuineness of the issues, the trial court is expected to balance the requirements of expeditious disposal of commercial causes on one hand and of not shutting out triable issues by unduly severe orders on the other. Therefore, the trial court may impose conditions both as to time or mode of trial as well as payment into the Court or furnishing security. In the fourth eventuality, where the proposed defence appear

to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also of payment into the court or furnishing security or both, which may extend to the entire principal sum together with just and requisite interest.

33.2. Thus, it could be seen that in the case of substantial defence, the defendant is entitled to unconditional leave; and even in the case of a triable issue on a fair and reasonable defence, the defendant is ordinarily entitled to unconditional leave to defend. In case of doubts about the intent of the defendant or genuineness of the triable issues as also the probability of defence, the leave could yet be granted but while imposing conditions as to the time or mode of trial or payment or furnishing security. Thus, even in such cases of doubts or reservations, denial of leave to defend is not the rule; but appropriate conditions may be imposed while granting the leave. It is only in the case where the defendant is found to be having no substantial defence and/or raising no genuine triable issues coupled with the Court's view that the defence is frivolous or vexatious that the leave to defend is to be refused and the plaintiff is entitled to judgment forthwith. Of course, in the case where any part of the amount claimed by the plaintiff is admitted by the defendant, leave to defend is not to be granted unless the amount so admitted is deposited by the defendant in the Court.

33.3. Therefore, while dealing with an application seeking leave to defend, it would not be a correct approach

to proceed as if denying the leave is the rule or that the leave to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues, with the defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave. It gets perforce reiterated that even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated above could be imposed while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the defendant fails to show any genuine triable issue and the Court finds the defence to be frivolous or vexatious."

[10] It may not be necessary to dilate more on the tests and it will suffice to say that in a leave to defend application filed by the defendants in a summary suit, it is imperative for the trial court to examine the points raised and test whether it passes muster *qua* ratios/principles about which there is allusion supra. In the instant case, trial court has not done the same.

[11] The point that the defendants have signed on blank papers has been raised in the leave to defend application and therefore, the conclusion that the trial court is unable to understand what the defendants are conveying is clearly unacceptable.

[12] Be that as it may, as the trial court has not applied **IDBI/Kashyap** tests and taken a decision as to whether the defence is

moonshine or not and as to whether triable issues arise, this case necessitates a remand.

[13] Therefore, this Court deems it appropriate to remand the matter to the trial court with a direction to the trial court to consider the leave to defend application filed by the defendants as expeditiously as the business of the trial court would permit and decide the same by applying **IDBI/Kashyap** principles laid down by the Hon'ble Supreme Court for testing leave to defend applications.

[14] As already alluded to supra, it is made clear that this Court has not expressed any view or opinion on the leave to defend application of the petitioners and therefore, the trial court shall now consider leave to defend application in the aforesaid manner on its own merits and in accordance with law.

[15] The impugned order of the trial court is set aside for the purpose of denovo adjudication of the leave to defend application.

[16] While adjudicating the leave to defend application afresh, trial court shall consider the submissions of the defendants as well as the plaintiff who is entitled to oppose the leave to defend plea.

[17] Impugned order is set aside. Matter is remanded back to the trial court for denovo legal drill in the leave to defend application.

[18] Captioned CRP disposed of in the aforesaid manner. There shall be no order as to costs.

[19] Though obvious, further proceedings in the main suit will be subject to the outcome of the leave to defend application.

[20] Consequently, the two captioned MCs are also disposed as closed. There shall be no order as to costs.

CHIEF JUSTICE

Sushil