



CNR: KAHC010101382019

NC: 2026:KHC:55234
WP No. 15498 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 15498 OF 2019 (GM-CPC)

BETWEEN:

1. SRI. INDRAJIT LANKESH
S/O. LATE P. LANKESH,
AGED ABOUT 49 YEARS,
PROPRIETOR, LANKESH CHITRALAYA
NO.810, 7TH BLOCK, 2ND PHASE,
BANASHANKARI III STAGE,
100 FEET RING ROAD,
BANGALORE-560 085.

...PETITIONER

(BY SRI. M.S. SHYAM SUNDAR, SENIOR ADVOCATE FOR
SRI. K.M. SUBAIR AND ARNAV A. BAGALWADI,
ADVOCATES)

AND:

1. M/S. AKK ENTERTAINMENT PVT. LTD.,
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 1956 AND
HAVING ITS OFFICE AT
NO.109, MIDFORD HOUSE,
MIDFORD GARDEN, OFF MAHATMA GANDHI ROAD,
BANGALORE-560 001,

REPRESENTED BY ITS DIRECTOR,
MR. A. RUDRAGOUD.

...RESPONDENT

(BY SRI. DHYAN CHINNAPPA, SENIOR ADVOCATE FOR
SRI. J A JACOB ALEXANDAR)

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THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE ORDER DATED 29.03.2019 ORDER DATED PARTLY ALLOWING I.A.NO.1/2012, IN O.S.NO.26420/2011 PASSED BY THE LXXIV ADDITIONAL CITY CIVIL AND SESSION, AT BANGALORE TO AN EXTENT OF "DIRECTING THE PETITIONER TO FURNISH THE SECURITY TOWARDS THE DECREETAL AMOUNT' IN CASE OF THE RESPONDENT SUCCEEDS IN THE SUIT AT ANNEXURE-B; AND ETC.

THIS PETITION, COMING ON FOR DICTATING ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

The respondent-plaintiff has instituted O.S.No.26420/2011 under Order XXXVII Rule 1 of the Code of Civil Procedure, 1908 (for short 'the CPC'), invoking the summary procedure, *inter alia* contending that the suit is founded on an acknowledgment of debt dated 21.03.2009 executed by the petitioner-defendant, whereby the petitioner acknowledged receipt of a short-term loan of Rs.97,73,400/- and undertook to repay the

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said amount together with interest at the rate of 16% per annum.

2. Upon service of summons, the petitioner-defendant filed I.A.No.1/12 under Order XXXVII Rule 3(5) of the CPC seeking unconditional leave to defend the suit. The learned Trial Judge, upon consideration of the rival contentions, has recorded a finding that the petitioner has raised a substantial and bona fide defence and, therefore, is entitled to leave to defend the suit. However, taking note of the fact that the respondent-plaintiff had admittedly advanced a sum of Rs.97,73,400/- to the petitioner by way of cheque, the learned Trial Judge, while exercising discretion under Order XXXVII Rule 3(5) of the CPC, has partly allowed the application and granted leave to defend subject to the petitioner furnishing security for the amount that may ultimately be decreed in favour of the respondent-plaintiff.

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3. It is this condition imposed while granting leave to defend that is called in question in the present proceedings.

4. The core question that arises for consideration is whether the Trial Court committed any error in granting conditional leave to defend to the petitioner/defendant by directing it to furnish security for the decretal amount, notwithstanding the observations made by this Court in C.R.P.No.507/2021 that the suit had substantially progressed and the very purpose of initiating proceedings under Order XXXVII stood frustrated.

5. The scheme of Order XXXVII of the CPC is well-settled by a catena of judgments of the Hon'ble Supreme Court. The primary object of the summary procedure under Order XXXVII is to ensure expeditious disposal of suits involving liquidated demands based on negotiable instruments, written contracts, or acknowledgments of debt, by preventing defendants from delaying the



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plaintiff's legitimate claim through frivolous, vexatious, or untenable defences. The mechanism of "leave to defend" under Order XXXVII Rule 3 is the cornerstone of this scheme, and it is now settled law that the grant of leave to defend is the rule, while its refusal is the exception.

6. The authoritative exposition on the principles governing the grant of unconditional or conditional leave to defend is to be found in the judgment of the Hon'ble Supreme Court in **IDBI Trusteeship Services Ltd. v. Hubtown Ltd.¹**, which reaffirmed the five-fold test laid down in **Mechalec Engineers & Manufacturers v. Basic Equipment Corporation²**. As recapitulated by the Hon'ble Supreme Court in **B.L. Kashyap & Sons Ltd. v. JMS Steels & Power Corporation³**, the gradations are: (i) where the defendant discloses a substantial defence likely to succeed, he is entitled to unconditional leave; (ii) where triable issues indicating a fair, bona fide,

¹ (2017) 9 SCC 665

² AIR 1977 Del 380 (DB)

³ (2022) 10 SCC 1



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or reasonable defence are raised, he is ordinarily entitled to unconditional leave, though in a rare case the court may impose a condition if there is reason to doubt his good faith; (iii) where triable issues are raised but the court doubts the genuineness of those issues or the defendant's good faith, conditional leave may be granted as to time, mode of trial, payment into court, or furnishing security; (iv) where the defence is plausible but improbable, the court may grant conditional leave requiring deposit of the amount claimed or part thereof, or security; (v) where the defendant has no substantial defence and raises no genuine triable issues, a defence that is frivolous or vexatious, leave is refused and the plaintiff gets judgment forthwith; and (vi) where part of the amount is admitted as due, leave is granted only on that admitted amount being deposited in court. The proviso to Order XXXVII Rule 3(5), as amended, further mandates that deposit of any admitted amount is a condition precedent for the grant of leave to defend.

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7. In the instant case, the plaintiff's suit is founded on an acknowledgment of debt dated 21.03.2009, executed by the defendant, confirming receipt of a short-term loan of Rs.97,73,400/- and the payment was effected by way of cheque. The defendant, in its application for leave to defend (I.A.No.1 of 2012 under Order XXXVII Rule 3(5) CPC), has contended that the amount was not a hand loan but consideration for services rendered for the production of movies for the plaintiff company. It is trite that in a summary suit for recovery of money based on a written acknowledgment of debt, the burden lies heavily on the defendant to disclose a triable issue that is substantial, bona fide, and not merely a plausible but improbable defence. Where the defence raises a doubt in the mind of the court as to the genuineness or good faith of the triable issue, particularly in a case where the plaintiff has produced a written acknowledgment coupled with proof of payment by cheque, the Court is well within its jurisdiction under Order XXXVII Rule 3(5) and 3(6)(b)

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to grant conditional leave by directing the defendant to furnish security for the decretal amount. This position has been consistently followed by the Delhi High Court including in ***M/s. P.C.Jain Textile Pvt. Ltd. vs. Shyam Sunder Suri⁴***, which has held that even if triable issues are raised, 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 including payment into court or furnishing security. Similarly, the Bombay High Court in ***Sanjay Mahadeo Prasad Trivedi vs. Housing Development Finance Corporation Bank Ltd.⁵***, has cautioned that once a defendant establishes a triable issue, the court cannot impose an onerous or excessive deposit condition, but where the defence is plausible but doubtful, conditional leave with appropriate safeguards remains permissible.

⁴ CS (COMM) No.560 of 2023

⁵ W.P.No.4264 of 2021



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8. The reliance placed by the petitioner on the observations made by this Court in C.R.P.No.507/2021, whereby the civil revision petition filed by the petitioner (seeking rejection of plaint) was dismissed with the remark that the suit had substantially progressed and the purpose of Order XXXVII proceedings stood frustrated, is misplaced. The observations in the civil revision petition were made in the context of an application under Order VII Rule 11 of the CPC for rejection of plaint, and the dismissal of the revision petition on the concession of learned Senior Counsel for the respondent cannot be construed as a binding determination on the distinct question of whether the defendant ought to be permitted to defend the suit without offering security. The length, progress, or procedural stage of the suit cannot be a determining factor to set aside an order imposing a condition to defend, especially when the core inquiry under Order XXXVII Rule 3 remains the nature, strength, and bona fides of the defence disclosed by the defendant. Even

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if the suit has substantially progressed and is being tried as a regular suit, the discretion of the court under Order XXXVII Rule 3(5) to impose conditions, including security, remains intact where the defence is doubtful or the court has reasons to doubt the good faith of the defendant.

9. In view of the aforesaid position of law, as consistently upheld by the Hon'ble Supreme Court in **Mechalec Engineers** (supra), **IDBI Trusteeship** (supra) and **B.L. Kashyap** (supra) and followed by various High Courts including the Delhi High Court judgment on conditional leave under Order XXXVII Rule 3(5) and the Bombay High Court ruling on deposit conditions, this Court finds no infirmity in the order of the learned Single Judge granting conditional leave to defend subject to furnishing of security. The observations in C.R.P. No.507/2021, made while disposing of a revision petition against rejection of plaint, do not aid the

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defendant in seeking reversal of the condition imposed for defending the summary suit.

10. The petition is, accordingly, devoid of merit and stands ***dismissed***.

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(SACHIN SHANKAR MAGADUM)
JUDGE

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List No.: 3 Sl No.: 2