

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 5212 OF 2016**

1. M/s. Neesarga Tractors  
A partnership firm having its registered office at Opp. Hawaii Pillar, Near Dantiwada Colony, Dessa, District Banaskantha, Gujarat – 385 535.
2. Shri Yasinbhai Vajirabbhai Banglawala  
Age 47 Years, Occu. Business, Resident at Palankar Desa Highway, At Post Palanpur, District Banaskantha, Gujarat – 385 001.
3. Shri Vinodbhai Bhikabhai Pavaya  
Age 40 Years, Occu. Business, Resident at Ramnagar Society, At Post Takarwada Taluka Palanpur, District Banaskantha Gujarat – 385 520.
4. Shri Dalasangbhai Jitabhai Patel  
Age 69 Years, Occ. Business, Resident At Vesa, Taluka Vadgam, District Banaskantha, Gujarat – 385 421.
5. Shri Ashokkumar Samjibhai Choudhary  
Age 33 Years, Occ. Business, Resident at 216, Pavayawas, Ramnagar, At Post Tarkrawada, Taluka Palanpur, District Banaskantha, Gujarat.

... PETITIONERS

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**VERSUS**

M/s. John Deere India Pvt. Ltd.  
A Private Limited Company incorporated  
under the Companies Act of 1956 and  
having its factory at Off. Pune-Nagar Road  
Sanaswadi, Taluka Shirur, District Pune.

... RESPONDENT

Mr. Shriram S. Kulkarni for Petitioners.

Dr. Abhinav Chandrachud a/w Subodh Kurdukar a/w Krishna Borkute  
a/w Kajal Malkan I/by Kurdukar Associates for Respondent.

**CORAM : NITIN W. SAMBRE, J.**  
**RESERVED ON : JULY 27, 2018.**  
**PRONOUNCED ON : AUGUST 3, 2018.**

**ORDER**

. Out of the Dealership Agreement dated 28<sup>th</sup> November 2007, the Respondent filed Special Summary Suit No. 155 of 2010 in the Court of Civil Judge Senior Division, Pune with a prayer for recovery of amount of Rs. 50,70,000/- i.e. Rs. 39,00,000/- being an admitted amount towards dues by the Defendant and Rs. 11,70,000/- towards interest at the rate of 18% per annum from 13<sup>th</sup> October 2008 till the date of filing of the suit i.e. 13<sup>th</sup> June 2010. Needless to say that, the suit is initiated pursuant to the provisions of Order XXXVII of the Code of Civil Procedure which is to be tried in summary manner.

2. In the said proceedings, the present Petitioners, who are the Defendant Nos. 1 to 5, preferred an Application pursuant to the provisions of Order XXXVII Rule 3 (5) of the Code of Civil Procedure for grant of unconditional leave to defend. The learned court of Civil Judge Senior Division, Pune rejected the said Application (Exhibit – 37) vide impugned order dated 16<sup>th</sup> March 2016. As such, this Writ Petition.

3. Heard the learned Counsel for respective parties.

4. Mr. Kulkarni, the learned Counsel for Petitioners would invite attention of this Court to certain factual background. According to him, on 28<sup>th</sup> November 2007 Dealership Agreement was entered into between the Plaintiff and Defendants.

5. The present Petitioners - original Defendants claimed to have informed the Respondent – original Plaintiff vide communication dated 14<sup>th</sup> April 2008 that they do not wish to continue the business with the Plaintiff. Accordingly, it is expressed that they intend to settle the account. The Petitioners accordingly requested to deduct the security deposit and adjust the cost of spare parts by clearing the stock of the stock of the same

and let to know about the balanced amount which will be cleared immediately.

6. The learned Counsel then would rely upon the communication dated 12<sup>th</sup> May 2008 so as to submit that the Petitioners have shown their *bona fide* to settle the account. According to him, it was informed to the Respondent that there are no pending C-Forms and the list of C-Forms is forwarded for settling the account. He submits that they were ready and willing to pay the outstanding amount. He would then urge that for the remaining outstanding amount of Rs. 23,00,000/- Demand Draft will be sent within stipulated period.

7. The learned Counsel then would urge that always it was the intention of the Petitioners – Defendants not to enter into any dispute and show their *bona fide* to settle the account. According to him, a Demand Draft for Rs. 21,07,140/- was drawn on or about 3<sup>rd</sup> April 2008 and was paid to the account of the present Respondent. He would then invite attention of this Court to certain terms of the Agreement, particularly clause – (13) which deals with Termination and clause – (14) which deals with Post – Termination. Relying upon the said clauses, he would urge

that by offering to settle the account, Petitioners have acted in terms of the Agreement and established their *bona fide*.

8. The learned Counsel then would urge that since the Plaintiff has failed to settle the account by re-reconciling the payments made and the Plaintiff has misused the cheques which were in custody, given on 21<sup>st</sup> November 2007 towards the security. The Defendants need to be granted blanket leave to defend, as there exist a *bona fide* dispute and there are every chances of succeeding in the proceedings. He would then invite attention of this Court to the Statement of Account dated 27<sup>th</sup> May 2008. According to him, Rs. 21,00,000/- *referred supra* paid on or about 3<sup>rd</sup> April 2008 is not reflected in the Statement of Account. He would then urge that the amount of Rs. 39,00,000/- was never due and payable.

9. According to the learned Counsel, there is no specific denial in the reply to the Application for grant of leave to defend. Relying upon the extract of the account placed on record, a submission is made that the particulars of the claim in the plaint are disputed. The learned Counsel for the Petitioners - Defendants submits that the cheques which were dishonoured are not out of the transaction, as is reflected in the suit, but

were given towards the security deposit which are misused by the Plaintiff. According to him, in spite of communications dated 14<sup>th</sup> April 2008 and 12<sup>th</sup> May 2008, the account is not settled.

10. In the aforesaid background, the learned Counsel for the Petitioners - Defendants would urge that the seriously triable issue can be noticed from the contents of the Application and he has sufficiently *prima facie* established as regards the good and reasonable conduct of the Petitioners – Defendants. According to him, the Petitioners – Defendants have fair and reasonable chances of succeeding in the suit, as there is a good defence available to the Petitioners - Defendants. As such, the Court should have granted unconditional leave to defend. According to him, as such the order impugned is not sustainable.

11. *Per contra*, Dr. Chandrachud, the learned Counsel appearing for the Respondent – Plaintiff would urge that bare reading of the documents which are relying upon by the Petitioners, particularly the one dated 14<sup>th</sup> April 2008 and 12<sup>th</sup> May 2008 if appreciated in the backdrop of the terms of the Agreement in clear terms admits the liability. He would draw attention of this Court to the fact that the cheques for an amount of

Rs. 39,00,000/- which were issued, dishonoured and the notice issued by the Plaintiff under Section 138 of the Negotiable Instruments Act was never replied by the Petitioners - Defendants.

12. According to the learned Counsel, in communication dated 12<sup>th</sup> May 2008 principal amount of Rs. 32,59,094.32 ps. was admitted towards the principal amount and Rs. 4,99,608.10 ps. towards the interest. He would then urge that the Petitioners - Defendants themselves adjusted certain credit notes for the admitted outstanding amount of Rs. 23,00,000/-. According to him, the cheques which were dishonoured were infact towards the satisfaction of the liability as it put-forth in the suit claim. He submits that the defence raised by the Petitioners - Defendants about issuance of blanket cheques towards security, is a contention raised by way of afterthought, as at no point of time such contention was raised earlier.

13. The learned Counsel then would urge that the Demand Notice dated 19<sup>th</sup> November 2008 under the provisions of Negotiable Instruments Act was never replied. According to him, the alleged Demand Draft for an amount of Rs. 21,00,000/-, of which the blank receipt dated

3<sup>rd</sup> April 2008 is produced on record, is subsequent to the communication dated 14<sup>th</sup> April 2008 and 12<sup>th</sup> May 2008, wherein the liability in clear terms was admitted by the Defendants to the extent of Rs.23,00,000/-. He would then urge that in the Application for leave to defend, a contradictory stand is taken that amount of Rs. 5,00,000/- was deposited towards security deposit with the Plaintiff, when they themselves have come out with a case that the cheques were misused by the Plaintiffs which were given blank towards the security. According to him, the order impugned is just and proper. It does not warrant any interference and he sought dismissal of the Writ Petition.

14. Considered rival submissions.

15. In view of the law laid down by the Apex Court in the matter of ***IDBI Trusteeship Services Limited V/s Hubtown Limited***<sup>1</sup>, particularly in paragraph no. 17 which reads thus –

*“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 case, as follows :*

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1 (2017) 1 Supreme Court Cases 568

**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.”*

This Court is required to appreciate whether the Petitioners – Defendants have satisfied this Court that they have a substantial defence based on which they are likely to succeed in the suit and as such they may not be put to any condition. This Court is also required to appreciate whether a fair or reasonable defence is raised by the Petitioners - Defendants may not be a positively good defence.

16. If in the aforesaid background we appreciate the case of the present Petitioners, what is noticed, is the execution of the Dealership Agreement dated 28<sup>th</sup> November 2007 is an admitted fact, so also the communications dated 14<sup>th</sup> April 2008 and 12<sup>th</sup> May 2008. In the communication dated 12<sup>th</sup> May 2008 the Petitioners – Defendants in

categorical terms admitted liability of Rs. 23,00,000/-. This amount of Rs. 23,00,000/- is sought to be adjusted against the payment of Rs. 21,00,000/- which according to the Defendants was made to the Plaintiff on or about 3<sup>rd</sup> April 2008. It is difficult to accept the said submission of the Defendants, particularly when the alleged Demand Draft of Rs. 21,00,000/- was paid prior to the communication dated 12<sup>th</sup> May 2008 admitting the liability of Rs. 23,00,000/-.

17. Apart from above, in the Application (Exhibit – 37), the Defendants themselves have come out with a case of security deposit of Rs. 5,00,000/-. In the said background, the claim of the Defendants that on the date of execution of the Agreement i.e. 28<sup>th</sup> November 2007 three blank cheques were issued to the Plaintiff, does not impress this court to accept the same as a good or reasonable defence. There is one more reason to disbelieve the said statement at this stage is the conduct of the present Petitioners - Defendants in non replying the notice issued under the provisions of Negotiable Instruments Act calling upon to pay the amount under the cheques to the tune of Rs. 39,00,000/-.

18. The Apex Court in the matter of **V. K. Enterprises and Another V/s Shiva Steels**<sup>1</sup> had an occasion to deal with a similar eventuality as is sought to be raised in the present Petition. In paragraph nos. 9 to 13 while dealing with the claim, the Apex Court has observed thus :

*“9. On consideration of the submissions made on behalf of the respective parties and on an examination of the photocopy of the cheque itself, it will be apparent that the allegations made in the application filed by the petitioner under Order 37 Rule 3 CPC were without any foundation. As submitted on behalf of the respondent, there is no sign of any interpolation having been made on the cheque and in particular, the date thereof where the figure '10' in Roman numerals had not even been inserted. There are no signs of attempt to erase any of the writings or figures on the cheque to support the allegations made on behalf of the petitioner.*

*10. Order 37 CPC has been included in the Code of Civil Procedure in order to allow a person, who has a clear and undisputed claim in respect of any monetary dues, to recover the dues quickly by a summary procedure instead of taking the long route of a regular suit. The courts have consistently held that if the affidavit filed by the defendant discloses a triable*

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<sup>1</sup> (2010) 9 Supreme Court Cases 256

*issue that is at least plausible, leave should be granted, but when the defence raised appears to be moonshine and sham, unconditional leave to defend cannot be granted.*

**11.** *What is required to be examined for grant of leave is whether the defence taken in the application under Order 37 Rule 3 CPC makes out a case, which if established, would be a plausible defence in a regular suit. In matters relating to dishonour of cheques, the aforesaid principle becomes more relevant as the cheques are issued normally for liquidation of dues which are admitted. In the instant case, the defence would have been plausible had it not been for the fact that the allegations relating to the interpolation of the cheque is without substance and the ledger accounts relating to the dues, clearly demonstrated that such dues had been settled between the parties. Moreover, the issuance of the cheque had never been disputed on behalf of the petitioner whose case was that the same had been given on account of security and not for presentation, but an attempt had been made to misuse the same by dishonest means.*

**12.** *Against such cogent evidence produced by the respondent-plaintiff, there is only an oral denial which is not supported by any corroborative evidence from the side of the petitioner. On the other hand, the ledger book maintained by the respondent and settled by the petitioner had been produced on behalf of the respondent in order to prove the transactions in*

*respect of which the cheque in question had been issued by the petitioner.*

**13.** *In our view, the defence raised by the petitioner does not make out any triable issue and the High Court has dealt with the matter correctly and has justifiably rejected the petitioner's application under Order 37 Rule 3 CPC and the same does not call for interference by this Court.”*

19. In the backdrop of aforesaid observations of the Apex Court, if the claim of the Petitioner is analyzed, the fact remains that the cheques which were issued by the Defendants – Petitioners has to be presumed in discharge of the dues which are admitted. Apart from above, there are admissions given by the present Petitioners – Defendants in their communication dated 12<sup>th</sup> May 2008 about the admission of the debt.

20. That being so, there is enough room to infer that the present Petitioners – Defendants are trying to set up such defence which hardly impress upon this Court to infer their likelihood of succeeding in the suit. The defence *prima facie* does not appear to be fair or reasonable. The admission in the communication dated 12<sup>th</sup> May 2008, dishonour of the cheques for an amount of Rs. 39,00,000/-, non-replying of the notice

issued under the provisions of Negotiable Instruments Act *prima facie* takes this Court to the conclusion that the Petitioners - Defendants are not entitled for blanket leave to defend. Their conduct of trying to run away from the admitted liability as reflected in communications dated 14<sup>th</sup> April 2008 and 12<sup>th</sup> May 2008 is setting up a defence of issuance of additional cheque towards security, when already Rs. 5,00,000/- was claimed to have been deposited towards the same.

21. Trying to make out a case of settling of the account by making payment of Rs. 21,00,000/- pursuant to Demand Draft drawn on Bank of Baroda on 3<sup>rd</sup> April 2008 and non replying the notice issued under the provisions of Negotiable Instruments Act, forms this Court to take a view that the Defendants – Petitioners are not entitled for the blanket leave to defend. The order impugned passed by the learned Civil Judge Senior Division, Pune granting leave to defend the suit in favour of the Petitioners – Defendants subject to deposit of Rs. 40,00,000/-, in my opinion, appears to be reasonable.

22. In the backdrop of above, contention of the Petitioners – Defendant that the matter be remanded back for reconsideration, as the

learned court of the Civil Judge Senior Division, Pune has not applied his mind, in all the aforesaid eventuality, does not warrant any interference.

23. The Writ Petition lacks merit. Hence, the same is dismissed.

**(NITIN W. SAMBRE, J.)**

24. After pronouncement of the order, the learned Counsel for the Petitioners – original Defendants seeks extension of 12 weeks' time to deposit the amount as ordered by the learned Civil Judge Senior Division, Pune. The prayer is graciously conceded by the learned Counsel for the Respondent.

25. As such time to deposit the amount as ordered by the learned Civil Judge Senior Division, Pune is extended by 12 weeks from today with an understanding that no further extension will be granted in any of the circumstances.

**(NITIN W. SAMBRE, J.)**