IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Commercial Appeal (Lodg) No. 248 OF 2018
IN
SUMMONS FOR JUDGMENT NO. 64 OF 2016
IN
COMMERCIAL SUMMARY SUIT NO.404 OF 2016

with
NOTICE OF MOTION (LODG) NO.549 OF 2018

Mour Marbles Industries Pvt. Ltd. ...Appellant

Versus

1.Motilal Laxmichand Salecha HUF, Proprietor of M/s.Mala Investments through its Karta Motilal Laxmichand Salecha.

2. Gopallal Madanlal Mour, Director of M/s.Mour Marbles Industries Pvt.Ltd.

3. Sanjay Gopallal Mour, Director of M/s.Mour Marbles Industries Pvt.Ltd. ...Respondents

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Mr.Rohan Cama with Mr.Girish B.Kedia, for the Appellant.

Mr.Pradeep Thorat with Mr.Anil R.Mishra, for Respondent No.1.

CORAM: NARESH H.PATIL AND
G.S.KULKARNI, JJ

DATED: 11th June, 2018

Judgment: (Per G.S.Kulkarni, J.)

1. This is an appeal of the appellant/defendant, against an order dated 18 April 2018 passed by the learned Single Judge on a summons for judgment taken out by the respondents/plaintiffs, in a Commercial Summary Suit, instituted on a bill of exchange that is dishonour of a cheque. By the impugned order a conditional leave, to defend the suit has been granted in terms of the following order:-

> "8. In the premises, the following order is passed:
>
> (i) Defendant no.1 is granted leave to defend the suit on and subject to the condition of deposit in this court of a sum of Rs.1,86,78,313/- within a period of eight weeks from today;
>
> (ii) The amount, if any, deposited by the Defendants may be invested by the Prothonotary & Senior Master of this court in Fixed Deposit/s of Nationalised Bank/s initially for a period of thirteen months and renewable thereafter from time to time and to abide by further orders that may be passed in the suit herein;"

2. The case of the respondents/plaintiffs as made out in the plaint is that money was advanced to the appellant/defendant. For repayment of the amounts so advanced a cheque for Rs.1,86,78,313/- was issued by the appellant/ defendant in favour of the respondents/plaintiffs,

which on presentation for payment was dishonoured by the drawee bank with remark “exceeds arrangement”. The issuance of the cheque in question is not disputed by the appellant/defendant. The case of the appellant/defendant is that a blank cheque was issued in favour of the respondents/plaintiffs. The respondents/plaintiffs also filed a criminal complaint against the appellant/defendant under Section 138 of the Negotiable Instruments Act, 1881. The respondents/plaintiffs accordingly filed the summary suit in question upon the said negotiable instrument as issued by the appellants/defendants and dishonoured. A summons for judgment as filed was defended by the appellant/defendant by filing a reply.

3. The objection of the appellants/defendants to the summons for judgment was principally that the respondent/plaintiff being a money lender, Section 13 of the Maharashtra Money Lending (Regulation) Act,2014 (for short 'the Act') was attracted. By virtue of this provision the Court would not pass a decree in favour of a money lender, in any suit, unless the money lender holds a valid licence under the said Act. The summary suit in question therefore could not be decreed. In this situation, in any case unconditional leave to defend was required to be granted. In

support of its case before the learned Single Judge, the appellant/defendant placed reliance on the decisions in "*Sha Damji Deraj Vs. Megraj Bhikumchand & Co.*[1]", "*Khyati Realtors Pvt.Ltd. Vs. Zenal Construction Pvt.Ltd.*[2]", "*Popular Entertainment Network Ltd. Vs. Mehul Kumar*"[3], "*Yallava Nagappa Kunchikorve Vs. Kantabai Malli*"[4].

4. The learned Single Judge considering the facts of the case, and the undisputed position of the appellant/defendant admitted issuance of cheque/bill of exchange, observed that it was clear from the reading of the plaint as a whole alongwith documents produced therewith, that the summary suit was not for recovery of a loan, but for compensation to the plaintiff as a holder of a bill of exchange or cheque on account of dishonour by the drawee or by the acceptor. The learned Single Judge also referred to the statutory recognition of such liability, as imposed in law, by referring to Section 30 of the Negotiable Instruments Act which provides for liability of the drawer to repay the amount. It was observed that when payment is made by a cheque or another negotiable instrument, the liability under the loan is substituted by the liability to honour the cheque

1 1958 Bombay Law Reporter Vol.LX pg.1366
2 Company Petition No.243/2012 decided on 29-8-2013
3 SJ 54-2013 in SS 3303-2008 decided on 14-7-2015
4 2012(3) MH.L.J. 856

or the negotiable instrument as the case may be. The observations of the learned Judge in paragraphs 4, 5 and 7 of the impugned order are required to be noted which reads as under:-

> "4 … ….. As is obvious from the reading of the plaint as a whole along with documents produced therewith, the present suit is not for recovery of a loan but for compensation to the Plaintiff as a holder of a bill of exchange or cheque on account of dishonour by the drawee or by the acceptor. Section 30 of the Negotiable Instruments Act provides for such liability. Under Section 30, the drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as provided in the Act. It is nobody's case that the drawer in the present case, namely, the Defendants, did not have due notice of dishonour in accordance with the provisions of the Negotiable Instruments Act. The Defendants, as drawers of the suit cheque , which by definition is nothing but a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand, are bound to compensate the holder of the cheque or bill of exchange, namely, the Plaintiff, in the event of its admitted dishonour by the drawee bank.
>
> 5. Merely because while narrating the facts of the case the grant of loan by the Plaintiff to the Defendants finds a mention, merely as a historical narration, it cannot be said that the suit is for recovery of loan. The moment payment is made by a cheque or another negotiable instrument of a loan, the liability under the loan is substituted by the liability to honour the cheque or the negotiable instrument, as the case may be. In fact, in a sense, the original liability to pay the loan is discharged by means of execution of the negotiable instrument. If this negotiable instrument is not honoured upon presentation for payment, a distinct and new liability arises under the provisions of the Negotiable Instruments Act. It is no answer then to a suit filed on such negotiable instrument that its holder is a money lender and that he did not hold a valid licence when he lent the original sum. The original loan lent merely forms part of a consideration for the negotiable instrument. <u>There is nothing in law which prevents such consideration coming from a money lender, who does not hold a valid money lending licence. The consideration cannot be termed as an invalid consideration. Section 30 of the Act merely provides</u>

> for a bar in passing a decree in favour of a money lender in a suit which relates to money lent and advanced and does not render the loan itself to be either illegal or invalid. Accordingly, there is no merit in this defence offered to the summons for judgment.
>
> 7. In the premises, on the facts of the case, this court would be perfectly justified in making the summons for judgment absolute by passing a decree in favour of the Plaintiff. However, with a view to give one chance, only by way of mercy, to the Defendants to try and make out a case at the trial of the suit, this court is of the view that the Defendants may be allowed to defend the suit but on a condition of deposit of the entire principal amount of the dishonoured cheque into this court."
>
> (emphasis supplied)

5. In assailing the impugned order Mr.Cama, learned Counsel for the appellant has reiterated the contentions as urged before the learned Single Judge. Mr.Cama submits that the respondents were in fact money lenders, although he concedes that at the relevant point of time in respect of the amount which was advanced to the appellant/defendat, there was no licence under the said Act as held by the respondents/plaintiffs, but says that at an earlier point of time, the respondents-plaintiffs had a licence under the Act. Mr.Cama has drawn our attention to the accounts of the respondents/defendants to show that the respondents/defendants is engaged in the business of lending money that too without a licence. Hence it is submitted that this is a case clearly hit by Section 13 of the Act and the suit as filed for recovery of such loan itself was barred, as the respondent/plaintiff had indulged into transaction

of lending without a valid licence under the Act. Mr.Cama has relied on the decisions which we have noted above, in supporting the contentions.

6. On the other hand, Mr.Thorat, learned Counsel for the respondent/plaintiff would submit that the defences as raised on behalf of the appellant were wholly untenable and as observed by the learned Single Judge the defences are nothing but a moonshine. Mr.Thorat submits that although the appellant/plaintiff has not disputed that the cheque for the amount of Rs.1,86,78,313/- was issued and dishonoured, in the affidavit as filed by the appellant/defendant in reply to the summons for judgment, a peculiar assertion has been made on behalf of the appellant/defendant, that the actual loan amount was not disbursed by the respondent/plaintiff to the appellant/defendant for which the suit was filed and that the entries are merely book entries which were granted by the respondent/plaintiff to the appellant/defendant. We may note some of the contents of the appellant's/defendant's reply affidavit which reads thus:-

> "8. I further say and submit that there is no actual loan amount is disbursed by the Plaintiffs to the Defendants for which the present suit is filed. All entries of which the inspection is given, the same are merely a book entries which the plaintiffs are granted to the Defendants. There is no legal and actual amount at any point

> of time disbursed by the Plaintiffs to the Defendants, therefore, there is nothing due and payable by the Defendants to the Plaintiffs. …....
>
> 11. In addition to the aforesaid, I say and submit that as far as the cheques which is the subject matter of the present suit, I had handed over the blank cheque to Mr.Motilal Salecha way back on 5th May, 2013 as a security. At the time of handing over the said cheque, it was given only for the purpose of security with clear understanding that the Plaintiff will not use and/or deposit the same and only to utilize for clearing the entries. I say and submit that the Plaintiff contrary to the said instructions have deposited the said cheque by filling the amount, date and name in his own hand-writing. I say that the cheque issued in May, 2013 is evident from the entry of my Cheque-book and the Bank statement reflecting that prior and subsequent cheques in the serial name on cheques (which is the subject matter of the suit) were encashed way back in May, 2013 itself. I say that at the time when the cheque i.e. blank cheque was issued, there was no legal debt due and liability payable by the Defendant to the Plaintiff and the Plaintiffs have misused the said cheque (blank cheque) which itself required to be decided by conducting a trial and on this ground alone, this Defendant entitled unconditional leave to defend the suit. I crave leave to refer to and rely upon the Bank Statement and cheque book of the Defendant No.1 to substantiate the contentions before this Hon'ble Court that the subject matter of the cheque issued in May, 2013 as all the prior and subsequent cheques in serial number were honoured during the said period. … … ….”

7. Mr.Thorat would submit that the learned Single Judge thus has appropriately examined the facts of the case in holding that the defences as set up by the appellant/defendant were wholly untenable when it is observed in paragraph 7 of the impugned order that “*the Court would be perfectly justified in making the summons for judgment absolute by passing a decree in favour of the respondent/plaintiff, however, with a view*

to give one chance only by way of mercy to the appellant/defendant, conditional leave has been granted by directing the appellant/defendant to deposit in the Court the principal amount of dishonoured cheque."

8. We have heard the learned Counsel for the parties. Having perused the record as also the impugned order passed by the learned Single Judge, we are not persuaded to accept this submissions as urged on behalf of the appellant/defendant. At the outset, we may note that it is not in dispute, that the appellant/defendant had issued a negotiable instrument/cheque in favour of the respondent/plaintiff and the cheque was dishonoured. If this be the position, then, surely the provisions of Order XXXVII Rule 1 sub-rule 2(a) of the Code of Civil Procedure are attracted for a summary suit to be instituted upon a bill of exchange/cheque. It would be appropriate to note the said provision which reads thus:-

> "Order XXXVII **Summary Procedure**
>
> [1. Courts and classes of suits to which the Order is to apply. -
>
> (1) This Order shall apply to the following Courts, namely:-
>
> (a) High Courts, City Civil Courts and Courts of Small Causes; and
>
> (b) other Courts:
>
> Provided that in respect of the Courts referred to in clause (b), the

> High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it deems proper, and may also, from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper.
>
> (2) Subject to the provisions of sub-rule (1), the Order applies to the following classes of suits, namely:-
>
> (a) suits upon bills of exchange, hundies and promissory notes;
>
> (b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest arising-
>
> (i) on a written contract; or
>
> (ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or
>
> (iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.
>
> (iv) suit for recovery of receivables instituted by any assignee of a receivable."
>
> (emphasis supplied)

9. A perusal of the averments as made in the plaint clearly indicate that the suit is filed upon a bill of exchange/cheque issued by the appellant/defendant which was dishonoured when presented for payment. The question however is whether the contention as urged on behalf of the appellant/defendant that Section 13 of the Act was attracted

to non suit the respondent/plaintiff, which according to the appellant is for recovery of a loan by the respondent/plaintiff a money lender.

10. The object of the Act as can seen from the long title of the Act is to regulate the transactions of money lending as there was harassment at the hands of money lenders resulting into "frequent suicides of farmers" and that the then existing enactment (Bombay Money-Lenders Act,1946) was found to be inadequate to protect the farmers-debtors, and to prevent them from the harassment from the money-lenders. It would be appropriate to note the long title of the Act which reads thus:-

> " MAHARASHTRA ACT NO.VIII OF 2014.
> (First published, after having received the assent of the Hon'ble President in the "Maharahstra Government Gazette", on the 4th April 2014)
>
> An Act to regulate the transaction of money-lending in the State of Maharashtra.
>
> WHEREAS the harassment at the hands of money-lenders had been increased in the State resulting into the frequent suicides by farmers;
>
> AND WHEREAS the then existing enactment on money-lending was found to be inadequate to protect the farmers-debtors and to prevent them from the harassment by the money-lenders;
>
> AND WHEREAS under the circumstances it became absolutely necessary for the Government to take appropriate and stringent social and legal measures to effectively prevent the harassment to the farmers-debtors at the hands of the money-lenders; it was expedient to make a new law having better provisions for the regulation and control of of transactions of money-lending in the State of Maharashtra;
>
> AND WHEREAS both Houses of the State Legislature were not in session;

> AND WHEREAS the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to make a law, for the purposes aforesaid; and, therefore, promulgated the Maharashtra Money-Lending (Regulation) Ordinance,2014, on the 16th January 2014;
>
> AND WHEREAS it is expedient to replace the said Ordinance by an Act of the State Legislature; it is hereby enacted in the Sixty-fifth Year of the Republic of India as follows:- ..."
>
> (emphasis supplied)

11. The appellant/defendant is admittedly a private limited company which would be under a liability to make payment of the money underlying the dishonoured cheque to the respondent/plaintiff as provided under Section 30 of the Negotiable Instruments Act.

12. As regards the contention on the applicability of the Act, it would be appropriate to note the relevant provisions of the Act namely the definition of "loan" as contained under Section 2 and Section 13 which would bar a decree to be passed against money lender having no valid licence. The provisions read thus:

> "Section 2. **Definitions**
> In this Act, unless the context otherwise requires,-
> ....
> (13) "loan" means an advance at interest whether of money or in kind but does not include-
> (a) a deposit of money or other property in a Government Post Office bank or in any other bank or in a company or co-operative society ;
> (b) a loan to, or by, or a deposit with any society or association registered under the Societies Registration Act, 1860 or any other enactment relating to a public, religious or charitable object ;

(c) a loan advanced by the Government or by any local authority authorized by the Government ;
(d) a loan advanced to a Government servant from a fund, established for the welfare or assistance of Government servants, and which is sanctioned by the State Government ;
(e) a deposit of money with, or a loan advanced by, a co-operative society ;
(f) an advance made to a subscriber to, or a depositor, in a provident fund from the amount standing to his credit in the fund in accordance with the rules of the fund ;
(g) a loan to, or by, an insurance company as defined in the Insurance Act, 1938 ;
(h) a loan to, or by, a bank ;
(i) a loan to, or by, or deposit with, any corporation (being a body not falling under any of the other provisions of this clause), established by or under any law for the time being in force which grants any loan or advance in pursuance of that Act ;
(j) an advance of any sum exceeding rupees (three lakhs) made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act,1881, other than a promissory note;
(k) an advance of any sum exceeding rupees three thousand made on the basis of a hundi (written in English or any Indian language);
(l) an advance made bonafide by any person carrying on any business, not having for its primary object the lending of money, ifsuch advance is made in the regular course of his business ;
(m) except for the purposes of sections 29 and 31,-

(i) a loan, by a landlord to his tenant for financing of crops or seasonal finance, of not more than Rs. 1,000 per acre of land held by the tenant ;

(ii) a loan advanced to an agricultural labourer by his employer ;

"Section 13. **Suits by money-lenders not holding licence**

(1) No court shall pass a decree in favour of a money-lender in any suit unless the court is satisfied that at the time when the loan or any part thereof, to which the suit relates was lent, the money-lender held a valid licence, and if the court is satisfied that the money-lender did not hold a valid licence, it shall dismiss the suit.

(2) Nothing in this section shall affect the powers of a Court of Wards, or an Official Assignee, a receiver, an administrator or a Court under the provisions of the Presidency Towns Insolvency

> Act,1909, or the Provincial Insolvency Act,1920 or any other law in force corresponding to that Act, or of a liquidator under the Companies Act,1956, or the Companies Act,2013, as the case may be, to realise the property of a money-lender."
>
> (emphasis supplied)

13. A plain reading of the above definition indicates that a loan means an advance at interest whether of money or in kind but does not include what is provided in clauses (a) to (m) as contained in the said provision. In the context of the present dispute the relevant clause of the definition is clause (j) which provides that an advance of any sum exceeding rupees three lakhs made on the basis of negotiable instrument as defined under the Negotiable Instruments Act, other than a promissory note would not be 'a loan' within its definition as contained under Section 2(13).

14. Considering the forgoing statutory ambit of the Act, we are not persuaded to accept the submissions of Mr.Cama that the suit in question is in fact for recovery of a "loan" within the meaning and provisions of the Act so that the bar under Section 13 of the Act is attracted. This firstly for the reason that a cheque of a large amount of Rs.1,86,78,313/- (exceeding rupees three lakhs) which is a negotiable instrument (other than a promissory note) was issued by the

appellant/defendant, which clearly falls within the provisions of clause (j) of Section 2(13) of the Act, so as to dis-include such advance from being labelled as a loan under the Act. The transaction was thus completely outside the Act. Secondly, the advance in question is on the basis of the negotiable instrument which can be clearly seen from the following averments of the appellant/defendant as contained in the reply affidavit.

> 18. With reference to para 4, I say and submit that as far as the cheque referred therein, it was not issued in the month of February, 2016 as falsely alleged. The said cheque as aforesaid was issued in the month of May, 2013 as blank cheque towards the security for clearing loan entry which the Plaintiff has misused for the purpose of filing the present suit. I say that the Plaintiff also filed proceeding u/s.138 of the Negotiable Instruments Act which is well defended by the Defendants herein. I rely upon the papers and proceeding of the said Criminal complaint in that behalf when produced."

The above statement as made by the appellant/defendant unequivocally implies that the advance in question was made by the respondents/plaintiffs on receiving the cheque in question. Once such a statement is made by the appellant/defendant, it has in fact destroyed the appellant's/defendant's plea of any protection available under the Act. In other words wholly inconsistent and self destructive pleas were advanced by the appellant/defendant.

15. Once the amount as lent is not a loan within the meaning of

Section 2(13), there is no question of application of the provisions of Section 13 of the Act. In reaching to this conclusion we are also supported by the decision of the Division Bench of this Court in "*Parekh Aluminex Ltd. Vs. M/s.Ashok Commercial Enterprises & Anr.*"[5] The Division Bench considering the object of the said legislation rejected a similar objection on the applicability of the provisions of the erstwhile Bombay Money Lenders Act,1946 which was repealed by the present Act. The Division Bench held thus:-:-

> "17. The Bombay Money-Lenders Act was intended to do away with a very serious evil in our society. It was intended to keep control over money-lending transactions and to see that excessive rate of interest was not charged by money-lenders and the only way that such control could be maintained was by providing penalties for doing money-lending business without a proper license from the State. Therefore, in construing an Act of this nature which takes away vested rights and curtails freedom of contract in order to give relief to a particular class, the Court should guard against giving it an interpretation which would extend its scope. The provisions of the Act should be interpreted literally and strictly. Section 2(9)(f) expressly excludes an advance made on the basis of the negotiable instrument as defined under the Negotiable Instruments Act, from the definition of the term 'loan'.
>
> 18. Section 10 provides that no Court shall pass a decree in favour of a money-lender to which the Act applies unless the money-lender held a licence at the relevant time. Section 2(17) states that the expression "suit to which this Act applies" means any suit or proceeding of the nature mentioned in clauses (a), (b) and (c) thereof. Clause (a) refers to a suit or proceeding "for the recovery of a loan made after the date on which the Act comes into force." Thus if a loan falls within the ambit of the expression "suit to which this Act applies" in Section 2(17), a suit or

5 2014 SCC online Bom 2304

> proceedings to recover the same would have to be dismissed in view of Section 10 unless the money-lender holds a licence at the relevant time.
>
> 19. The question therefore, is whether the loan in the present case falls within the ambit of sections 2(17) and (10). The appellant's contention that the suit is barred by the provisions of the Bombay Money Lenders Act is not well founded. Section 2(9) defines a loan to mean an advance at interest whether of money or in kind, but does not include a loan or advance of the nature stipulated in clauses (a) to (f2)thereof. The above suit is not hit by the Bombay Money Lenders Act in view of clause (f) of section 2(9) of the Bombay Money Lenders Act. In view of clause (f), the loans do not fall within the purview of the Act as they were advances made on the basis of the negotiable instrument as defined in the Negotiable Instruments Act,1881 viz. the cheques and the bills of exchange.
>
> 20. In our view, in the present case, the loans were advanced by the respondents to the appellants on the basis of negotiable instruments other than promissory notes. This is clear from the facts and circumstances of this case especially the manner in which the amounts were advanced and cheques were drawn. The fact that the cheques were forwarded by the appellants to the respondents after the loans were advanced by RTGS transfers makes no difference. The amounts were advanced by the respondents to the appellants and the cheques and the bills of exchange were issued by the appellant to the respondents as a part of one composite agreement. ….."

16. Apart from the above clear position, we find ourselves in complete agreement with the learned Single Judge that the present suit is not for recovery of loan but a compensation payable to the plaintiff as the holder of the bill of exchange or cheque on account of dishonour by the drawee or by the acceptor. As clear from a plain reading of the provisions of Order XXXVII Rule 1 sub-rule 2(a), the summary procedure in respect

of the suit instituted for recovery of money would be clearly applicable when the suit is filed upon a bill of exchange. Manifestly as per the provisions of Sections 5 and 6 of the Negotiable Instruments Act,1881 a 'cheque' is bill of exchange and thus, there is no impediment for the suit to be maintained upon the bill of exchange. Thus, the provisions of Order XXXVII Rule 1 are squarely applicable to the facts in hand. In "*Vithal Krishna Shanbhag Vs. Sogmal Nathmal & Co., Bombay*" AIR 1958 Bombay 92, this Court has held that the cheque being a bill of exchange, the provisions of Order XXXVII Rule 1 undoubtedly apply to a suit based on cheque. The cheque in the present case is clearly issued in the name of the respondent/plaintiff.

17. As regards the decisions as relied on behalf of the appellant/defendant, the same are clearly not applicable in the facts and circumstances of the case. The decision in "*Sha Damji Deraj Vs. Megraj Bhikumchand & Co.*" (supra) as principally relied on behalf of the appellant/defendant it is clearly not applicable as in the said case there is no dispute about the applicability of the Bombay Money Lending Act, which is not a situation in the present case. Similarly the decision of the learned Single Judge in the case "*Yallava Nagappa Kunchikorve Vs.*

Kantabai Malli" (supra) as clear from the observations in paragraph (2) of the decision the plaintiff himself had come with a case that he was carrying on business of money lending. Once this is an admitted position, then following the decision in *Sha Damji Deraj* (supra), the learned Judge was pleased to grant unconditional leave to defend. The decision in the case "*Khyati Realtors Pvt.Ltd. Vs. Zenal Construction Pvt.Ltd***.**" is a decision recorded in deciding a winding up petition under the Companies act, it is in that context the learned Single Judge has considered the plea under the Bombay Money Lenders Act.

18. The above discussion makes it manifest that the appellant/defendant could not satisfy the Court that it had a fair, reasonable or a substantial defence much less a defence which can succeed so as to entitle it to a conditional leave to defend the suit. The learned Single Judge in the facts of the case taking into consideration the nature of the defence has thoughtfully found it appropriate to impose a pre-condition of deposit of the amount for the appellant/defendant to be conferred an opportunity to defend the suit, which in the facts and circumstances surely justifies the requirement of law. The unblushing and audacious case of the appellant/defendant is a depiction of a faint and a

lame attempt to somehow avoid an admitted liability by raising technical pleas. It is in this context, we may usefully refer to the recent decision of the Supreme Court in the case "*IDBI Trusteeship Services Ltd. VS. Hubtown Ltd.*"[6] where the Court superseding the principles in paragraph 8 of the decision in "*Mechelec Engineers & Manufacturers Vs. Basic Equipment Corpn*"[7] while considering the amended provisions of Order 37 Rule 3 of C.P.C. and the decision of the Supreme Court in "*Mikhiram (India)(P) Ltd. V. Chamanlal Bros.*"[8] in paragraphs 17.4, 17.5 and 17.6 has laid down the principles which would justify an order of a deposit as of the nature passed by the learned Single Judge. The Supreme Court has laid down the following tests:-

> "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

6 (2017)1 SCC 568
7 (1976)4 SCC 687
8 AIR 1965 SC 1698

> not be granted unless the amount so admitted to be due is deposited by the defendant in court."

19. Adverting to the above clear principles of law as laid down by the Supreme Court, the directions of the learned Single Judge that the appellant-defendant is permitted to defend the suit on the condition of deposit of the amount as directed, in the facts cannot be said to be untenable or illegal as contended on behalf of the appellant/defendant. As rightly contended on behalf of the respondents/plaintiffs only to give one chance, that too by way of mercy, the learned Judge considering the facts of the case has passed the impugned order, granting the appellant/defendant conditional leave to defend the suit on deposit of the said amount in the Court.

20. We accordingly see no reason to interfere with the well reasoned order of the learned Single Judge. The appeal is without merit. It is accordingly rejected. No costs.

21. As appeal is disposed of, nothing survives in the pending Notice of Motion (Lodg) no.549 of 2018, it is accordingly disposed of.

(G.S.KULKARNI, J.) **(NARESH H. PATIL, J.)**