

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUMMONS FOR JUDGMENT NO. 59 OF 2021
IN
SUMMARY SUIT NO. 56 OF 2021**

SANTOSH
SUBHASH
KULKARNI

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Aziz Amirali Ghesani & anr. ...Plaintiffs
Versus
Ibrabim Currim & Sons & ors. ...Defendants

Mr. Rashmin Khandekar, a/w Ms. Karishni Khanna, i/b Amit
Tungare, Ms. Jill Rodricks, Vinit Jain and Deep Dighe,
for the Plaintiffs.

Mr. Zain Mookhi, a/w Janhavi Doshi, i/b Maniar Srivastava
Asso., for Defendant no.2.

Mr. Jamshed Master, i/b Natasha Bhot, for Defendant no.3.

Mr. Siddha Pamesha, a/w Declan Fernandes, i/b Purazar
Fouzdar, for Defendant no.4.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 8th APRIL, 2022

PRONOUNCED ON: 14th SEPTEMBER, 2022

ORDER:-

1. This commercial division summary suit is instituted for recovery of a sum of Rs.1,20,00,000/- along with interest at the rate of 24% p.a. on the principal sum of Rs.1 Crore from the date of the suit till realization.

2. The material averments in the plaint can be summarized as under:

(a) Plaintiff no.1 is the husband of plaintiff no.2. Defendant no.1 is a registered partnership firm. Defendant nos.2 to 4 are the partners of defendant no.1. Defendant no.1 is engaged in the business of selling umbrellas for more than a century and has acquired goodwill in the market. The plaintiffs are also former employees of defendant no.1 – firm.

(b) In the year 2018, pursuant to representation made by defendant nos.2 to 4 that for expansion of business of defendant no.1 – firm they were mobilizing funds from the public under the Collective Investment Scheme, at a lucrative interest of 24% p.a., to be paid out monthly, the plaintiffs decided to invest their lifetime savings with the defendants in the said deposit scheme.

(c) The plaintiffs assert that during the period April - 2018 to January – 2020 the plaintiffs jointly invested a total sum of Rs.1 Crore by depositing diverse amounts, on various dates, the particulars of which are tabulated as under:

Sr. No.	Date	Name of the Depositors	Fixed Deposit Receipt No.	Amount (Rs.)
1.	03/04/2018	Aziz Ghesani and Jaya Ghesani	4596	25,00,000/-
2.	31/12/2018	Aziz Ghesani and Jaya Ghesani	608	10,00,000/-
3.	31/12/2018	Jaya Ghesani and Aziz Ghesani	609	5,00,000/-

4.	05/03/2019	Jaya Ghesani and Aziz Ghesani	620	15,00,000/-
5.	26/03/2019	Aziz Ghesani and Jaya Ghesani	621	15,00,000/-
6.	02/04/2019	Jaya Ghesani and Aziz Ghesani	622	10,00,000/-
7.	02/04/2019	Aziz Ghesani and Jaya Ghesani	623	5,00,000/-
8.	04/01/2020	Aziz Ghesani and Jaya Ghesani	631	15,00,000/-

(d) The plaintiffs further aver that they deposited the aforesaid amounts with the defendants by cross payee cheques drawn in favour of defendant no.1. In turn, the defendants issued credit notes in respect of the amounts received by them by way of deposits from the plaintiff. In order to gain confidence of the plaintiffs and to further lure the plaintiffs to deposit their entire savings corpus, the defendants initially paid interest at the rate of 24% p.a., as agreed.

(e) After the last deposit of Rs.15,00,000/- on 4th January, 2020, and having realised that the plaintiffs have exhausted their savings, the defendants, according to the plaintiffs, stopped payment of interest from the month of February – 2020. Eventually, as the deposits and interest were not paid despite repeated demands, the plaintiffs were constrained to address a letter on 8th June, 2020, calling upon the defendants to return the entire amount deposited with the

defendants, along with interest, as agreed. Since there was no response, legal notices were addressed on 18th July, 2020. In reply thereto, the defendant sought time to revert. But failed to reply to the legal notices. Hence, this suit.

3. Upon service of the writ of summons, defendant nos.2 to 4 entered appearance. Thereupon, the plaintiffs took out a summons for judgment. Defendant nos.2 to 4 have filed affidavits-in-reply seeking unconditional leave to defend the suit.

4. Defendant no.2 assailed the tenability of the suit under Order XXXVII as it is neither based on a negotiable instrument nor there is a contract between the plaintiffs and the defendants. It was contended that the claim for interest at the exorbitant rate of 24% p.a. is apparently based on an oral contract. Thus, the suit is not maintainable as a summary suit. Secondly, the suit was stated to be bad for non-joinder of necessary parties as the plaintiffs impleaded only three of the nine partners of defendant no.1 – firm, despite being fully aware of its constitution and partners.

5. On merits, defendant no.2 denied that the defendants were mobilizing funds for the expansion of the business of defendant no.1 – firm and, in that process, the plaintiffs were induced to place the deposits. According to defendant no.2, the

alleged credit notes/deposit receipts do not constitute written contract, especially the agreement to pay interest at the rate of 24% p.a. The entire exercise was driven by an oblique motive to being disrepute to defendant no.1 – firm which has been a running concern for over a century.

6. Affidavit-in-reply of defendant nos.3 and 4 proceed on identical lines. Defendant nos.3 and 4 have also assailed the tenability of the suit as a summary suit for not being based on either negotiable instrument, written contract or an unequivocal acknowledgment of liability. Defendant nos.3 and 4 contend that amounts were received by defendant no.2 and his father, for and on behalf of defendant no.1 – firm and those amounts have not been reflected in the balance-sheets of defendant no.1 – firm. Nor rest of the partners have signed such balance-sheets. Under such circumstances, defendant nos.3 and 4 cannot be saddled with the liability. It is further contended that whatever amounts had been received, were duly repaid to the plaintiffs alongwith interest. The issue as to whether defendant no.1 still owes any amount to the plaintiffs is, therefore, a matter for trial. Since the plaintiffs have clearly admitted that they have received regular pay outs from defendant no.1 – firm upto January, 2020, which includes the principal amount as well as interest

component, in any event, the amount due and payable to the plaintiffs would be less than Rs.1 Crore and, therefore, this Court would not have pecuniary jurisdiction to entertain and try this suit.

7. Lastly, it is contended that defendant nos.3 and 4 were never in the management of the affairs of defendant no.1 - firm at the relevant point of time when all the deposits were accepted from various depositors by defendant no.2 and one Akbar Karim. Thus, the existence or otherwise of privity of contract between the plaintiffs and defendant no.1, through defendant no.2, is essentially a triable issue. Therefore, defendant nos.3 and 4 are entitled to an unconditional leave to defend the suit.

8. In view of the aforesaid stand of defendant nos.3 and 4, defendant no.2 filed an additional affidavit controverting allegations attributed to defendant no.2 and his father. Certain allegations are made regarding the acts and conduct of defendant nos.3 and 4 qua the management of the business of defendant no.1 – firm, which are not at all germane to the determination of the aspect of grant of leave.

9. The plaintiffs have filed an affidavit-in-rejoinder. In addition to the credit notes/deposit receipts, the plaintiffs pressed into service the documents evidencing the payment of

interest and deduction of tax at source (TDS). Reliance was placed on Form-26AS filed by the plaintiffs reflecting the credit of interest and TDS by defendant no.1 – firm. Reliance was also placed on the confirmation of accounts on behalf of defendant no.1 – firm as of 1st April, 2019 qua plaintiff nos.1 and 2.

10. Defendant no.2 professed to contest the claim of the plaintiffs in the affidavit-in-rejoinder by filing an affidavit-in-sur-rejoinder. It was contended that in the rejoinder the plaintiffs have endeavoured to plead a totally new case, which is not the basis of the summary suit. According to defendant no.2, the documents sought to be relied upon, namely Form-26AS and the alleged confirmation of accounts, do not advance the cause of the plaintiffs as the said case runs counter to the case expressly stated in the plaint. This itself, according to defendant no.2, furnishes a ground for grant of unconditional leave to defend the suit.

11. In the light of the aforesaid pleadings, I have heard Mr. Khandekar, the learned Counsel for the plaintiffs, Mr. Mookhi, the learned Counsel for defendant no.2, Mr. Master, the learned Counsel for defendant no.3 and Mr. Pamesha, the learned Counsel for defendant no.4, at some length. With the assistance of the learned Counsels for the parties, I have

perused the averments in the plaint, affidavits-in-reply seeking leave to defend, rejoinder and sur-rejoinder thereto. I have also perused the documents annexed with the plaint and rejoinder.

12. At the outset, it may be necessary to note that the plaintiff had filed an Interim Application (L) No.5696/2020 for attachment before judgment. By an order dated 21st December, 2020, this Court was persuaded to permit the defendants to sale, deal with, create third party right or interest in the property set out in prayer Clause (b) of the said application, on the condition that the defendant, on receiving any consideration therefrom, shall deposit an amount of Rs.1 Crore with the Prothonotary and Senior Master of this Court, within a period of four weeks of receiving the sale proceeds.

13. The aforesaid order becomes relevant as it bears upon two contentions raised on behalf of the defendants. First, the bar envisaged by Section 12A of the Commercial Courts Act, 2015 to the institution of the Commercial Suit without exhausting pre-institution mediation does not operate. Second, the extent to which this order influences the stipulation of conditions, should the Court come to the conclusion of granting conditional leave to defend the suit. Mr. Master, the learned Counsel for defendant no.3, would urge that this stipulation takes care of

the aspect of grant of conditional leave in its entirety and no further stipulation as to payment or otherwise is warranted.

14. Mr. Khandekar, the learned Counsel for the plaintiffs submitted that the fact that the plaintiffs had placed deposits with defendant no.1 – firm, aggregating to the sum of Rs. 1 Crore is incontrovertible. Laying emphasis on the contentions in the affidavit-in-reply, on behalf of defendant nos.3 and 4, that the deposits were, in fact, accepted by defendant no.2 and the said deposits were also returned along with interest, Mr. Khandekar, strenuously submitted that the fact that defendant no.1 – firm had accepted the deposits is unequivocally admitted. In addition, there is evidence of unimpeachable character in the nature of the statements of accounts of the plaintiffs which substantiate the claim of deposit. Reliance was also placed on the balance confirmation letters dated 1st April, 2019, wherein the liability, to the extent of the amount then outstanding, was clearly acknowledged. In the face of this material, according to Mr. Khandekar, the submissions on behalf the defendants that the suit does not fall within the ambit of Order XXXVII is wholly misconceived. The payment of interest at the rate of 24% p.a. is evidenced by the tax deduction at source reflected in Form-26AS and, therefore, the defendants do not deserve leave to defend the

suit, even on the count that there is no express stipulation for payment of interest in the credit notes.

15. In opposition to this, Mr. Mookhi, the learned Counsel for defendant no.2, stoutly submitted that the very inception of the transaction rests on an oral contract between the plaintiffs and defendant nos.2 to 4. Mr. Mookhi would urge that the credit notes, on which the plaintiffs heavily bank upon, do not advance the cause of the plaintiffs. Disputing the character of the credit notes/deposit receipts, Mr. Mookhi submitted with tenacity that, the terms of the contract can not be discerned from the credit notes, especially, the duration for which the said amount was allegedly deposited and the interest which the said deposit would carry. Thus the credit notes, according to Mr. Mookhi, do not constitute a written contract, which could form the basis of a summary suit.

16. Mr. Master, the learned Counsel for defendant no.3, supplemented the submissions of Mr. Mookhi on the aspect of oral agreement and absence of stipulation as to payment of interest. Mr. Master would further urge that the plaintiffs cannot be permitted to draw any mileage from the documents in the nature of balance confirmation and TDS certificate, placed on record for the first time along with affidavit-in-rejoinder,

especially when there are no pleadings in support thereof in the plaint. In any event, the variance in the amount in the balance confirmation letters and the amount claimed by the plaintiffs renders the question of the exact outstanding amount a triable issue. Since the plaintiffs concede to have received the payments till the month of January-2020, the entitlement of the plaintiffs to the balance amount is a matter for trial, especially when there is, indubitably, no stipulation for payment of interest.

17. The learned Counsel for defendant no.4 adopted the submissions canvassed on behalf of defendant nos.2 and 3.

18. I have given anxious consideration to the rival submissions canvassed across the bar. Before adverting to deal with the contentious issue, it may be opposite to note the facts over which, at this stage, there does not appear much controversy. The claim of the plaintiff that they had advanced an amount of Rs.1 Crore collectively is substantiated by the statements of bank accounts which evidence the transfer of amount to the account of defendant no.1 – firm, through cheques. *Prima facie*, the claim of the plaintiffs that the credit notes/deposit receipts were issued to evidence the deposit/transfer of the amount finds support in the credit

notes/deposit receipts which also contain the mode of receipt of the payment i.e. the cheques drawn on the respective accounts of the plaintiffs. Particulars of the cheques specifically find mention in the credit notes/deposit receipts. If this factor is considered in conjunction with the assertions on the part of defendant nos.3 and 4 that the amounts, which were raised, were duly repaid, an inference becomes sustainable that the receipt of the amount of Rs.1 Crore, can hardly be put in contest.

19. The plaintiffs have claimed that during the period 8th May, 2018 to 1st January, 2020 they received diverse amounts towards interest. Undoubtedly, the plaintiffs had not initially pressed into service the documents evidencing TDS by defendant no.1 – firm, to substantiate the said claim. At this juncture, the plaintiff and defendant nos.3 and 4, at the least, seem to be in unison on the point that certain payments were made on behalf of defendant no.1 to the plaintiffs.

20. Controversy between the parties revolves around the exact amount, which had been repaid and the component; principal amount and/or interest. The plaintiffs assert those amounts were paid towards interest alone.

21. This leads me to the primary defence of the defendants that the case does not fall within the ambit of Order XXXVII. For an answer, it is necessary to appreciate the nature of credit notes/deposit receipts. Evidently, the credit notes/deposit receipts do not contain any stipulation as to the term of deposit. Nor do they contain stipulation as to payment of interest on the amount received thereunder. The deposit receipts are in a printed form. For instance, deposit receipt dated 31st December, 2018 reads, “Placed to the credit of Messrs AZIZ AMIRALI GHESANI/JAYA AZIZ GHESANI the sum of Rupees Ten Lakhs only.” Three out of eight receipts, i.e. the receipts dated 3rd April, 2018, 5th March, 2019 and 4th January, 2020 contain a further endorsement, “fixed deposit” (Page nos.28, 31 and 31D). Laying emphasis on aforesaid contents of the credit notes Mr. Mookhi urged that the transaction allegedly evidenced by credit notes does not partake the character of ‘deposit’. This brings to the fore the distinction between loan and deposit.

22. Mr. Khandekar, the learned Counsel for the plaintiffs, placed reliance on a judgment of a learned Single Judge of this Court in the case of *Basant Lal Agarwal vs. Lloyds Finance Ltd.*¹, wherein the distinction between a loan and a deposit was expounded in the following words:

12003 SCC Online Bom 1129.

"8. The distinction between a loan and a deposit is well settled in law. The line which divides them is one that is real though occasionally difficult to draw. The Privy Council in Mohammad Akbar Khan v. Attar Singh, AIR 1936 PC 171; 63 Ind App 279, held that a distinction which is perhaps the most obvious is that a deposit not for a fixed term does not seem to impose an immediate obligation on the depositor to seek out the depositor and repay him. The depositor is to keep the money till he is asked for it. A demand by the depositor would, therefore, seem to be a condition of the obligation of the depositor to repay. Following this judgment, of the Privy Council, a Division Bench of the Madras High Court in Abdul Hamid Sahib v. Rahmat Bi, held that the real point of distinction between the two concepts is when the repayment is to be made. In the case of a deposit, repayment will depend upon the maturity date fixed therefor or the terms of the agreement relating to the demand, on the making of which the deposit will become repayable. The Madras High Court held that unlike a loan there is no immediate obligation to repay in the case of a deposit. The judgment of the Madras High Court was followed by a Division Bench of the Allahabad High Court in Mansa Ram and Sons (Bankers) v. Janki Dass Om Prakash, . The Allahabad High Court adverted to Sheldon's Practice and Law of Banking (10th edition at page 145) wherein the law was summarised thus :

"The statute begins to operate immediately the money is due to be repaid i.e., after the expiration of the specified notice of withdrawal. If the deposit is for a fixed period, the statute begins to run immediately upon expiration of the agreed period. If the repayment of the money is conditional upon the return of the receipt, then the date of its return is the date upon which the statute begins to run."

(emphasis supplied)

23. On the aforesaid touchstone, the fact that in the case at hand, the credit note/receipt does not contain a stipulation as to the term of deposit does not detract materially from the claim of the plaintiffs. Two factors assume significance. First, the credit note/receipt clearly acknowledges the receipt of the amount thereunder. Second, the plaintiffs had called upon the defendants to pay the amounts covered by the aforesaid credit

note/receipts by addressing legal notices. Even if the case of the plaintiffs that they had repeatedly made verbal demands is not countenanced, at this stage, the legal notices constitute a specific and unequivocal demand of the said amount. Therefore, in my view, with the demand, arose the obligation of defendant no.1 to repay the amount received under the credit note/receipts.

24. The thrust of the defence premised on absence of stipulation as to the 'term of deposit' implying thereby that there was no contract to repay the amount, does not merit countenance if considered through the prism of the well recognized principle of law that the debtor should seek his creditor and repay the debt. In my view, the very acknowledgment of the receipt of the amount evidenced by the credit note/receipt gives rise to a contract to repay the said amount and the obligation becomes enforceable upon demand, in the absence of stipulation as to period of payment.

25. It would be contextually relevant to note that the counsels on both sides placed reliance on the Full Bench judgment of this Court in the case of *Jyotsna K. Valia vs. TS Parekh and Co.*, wherein the Full Bench had *inter alia* observed as under:

“16. A written contract therefore need not be evidenced in a single document written by the parties since the written document can be by exchange of documents in writing between the parties. On the other hand an implied contract would arise by the acts of parties to indicate an implied contract. A written contract, contemplated under Order XXXVII need not be necessarily signed by both the parties. However, the writing must be such to arrive at a conclusion that an agreement certainly has been brought into existence and that the claim made under such an agreement ought to be indisputable. In Jugal Kishore Rameshwardas v. Mrs. Goolbai Hormusji, while construing Section 2(a) of the Arbitration Act, 1940, the Supreme Court observed that it is well settled law that to constitute an arbitration agreement in writing it is not necessary that it should be signed by the parties and it is sufficient if the terms are reduced to writing and the agreement of the parties is established. In the Arbitration Act of 1966, Section 7 specifically provides that the arbitration agreement shall be in writing.

A learned Single Judge in an unreported judgment in Jaishree Chemicals v. Esskay Dyeing and Printing Works Summons for Judgment No. 23/1976 In Suit No. 1405 of 1975, decided on 19th April, 1976, considering the expression "written contract", under the amended provision, held that it must be given an extended meaning and if it is possible to spell out an agreement enforceable at law to do something to be found in the writing, which binds the parties, it is possible to hold that such an agreement is a contract in writing.

These are some indicators of understanding the expression "a contract in writing".

(emphasis supplied)

26. As regards the implied term of a contract, the Full Bench has observed as under:

“17. We may now consider the expression "implied term of a contract". Whether or not a term is implied is usually said to depend upon the intention of the parties as collected from the words of the agreement and the surrounding circumstances. In many classes of contract, however, implied terms have become standardised, and it is somewhat artificial to attribute such terms to the unexpressed intention of the parties. Courts in fact in such cases have laid down a general rule of law that in all contracts of a defined type-for example, sale of goods, landlord and tenant, employment, the carriage of goods by land or sea, certain

terms will be implied, unless the implication of such a terms would be contrary to the express words of the agreement. (*Johnstone v. Bloomsbury H.A. (1992) Q.B.*, 333).

A term ought not to be implied unless it is, in all the circumstances equitable and reasonable. But this does not mean that a term will be implied merely because in all the circumstances it would be reasonable to do so or because it would improve the contract or make its carrying out more convenient. "The touchstone is always necessity and not merely unreasonableness." (See *Liverpool City Council v. Irwin*) 1977 A.C.239.

Similarly, a term will not be implied if it would be inconsistent with the express wording of the contract."

27. The learned Counsels for the defendants were, in my view, justified in canvassing a submission that the stipulation as to payment of interest cannot be a matter of implication, more so as regards the rate of interest. However, I find it rather difficult to accede to the submission on behalf of the defendants that the absence of the term of deposit or the stipulation as to payment of interest would denude the credit note/receipts the character of contract. I am therefore not inclined to accede to the challenge to the tenability of the suit on the ground that it is not based on a written contract.

28. It is true that the plaintiffs had not initially relied upon the confirmation of accounts and those confirmations were pressed into service along with the affidavit-in-reply. It is trite law that confirmation of accounts furnishes a surer foundation for a summary suit under Order XXXVII. In fact, the Full Bench judgment in the case of *Jyotsna* (supra) expressly rules that a

summary suit on the accounts duly confirmed by the defendants would be maintainable.

29. In the facts of the case, the confirmation of the accounts whereby the liability as of 1st April, 2019 was admitted qua plaintiff no.1 to the tune of Rs.55,33,959/- and qua plaintiff no.2 to the tune of Rs.20,19,479/- are required to be appreciated in the light of the fact that entries in the account fully correspond with the credit notes/receipts as regards the credit of the amount on the respective dates upto 1st April, 2019. To add to this, there are debit entries for the amounts which the plaintiffs claimed to have received by way of interest against the entry, "interest on FD and Bill of Exchange". The confirmation of accounts thus fortifies the claim of the plaintiffs to a large extent. These confirmation of accounts also shed light on the component towards which the payments were received by the plaintiffs.

30. In this context, the reliance placed by Mr. Khandekar on the judgment of a learned Single Judge of this Court in the case of *Sun N Sand Hotel Limited vs. M/s. V. v. Kamat, HUF²*, appears to be well founded. In paragraph 40 of the said

²2003 Vol. 105(1) Bom. L. R. 625.

judgment the learned Single Judge observed, *inter alia*, as under:

“40. There is nothing, apart from the Counsels submission, that this agreement to pay interest was restricted to the period for which it was to be paid. If interest has been paid in the past and the balance is confirmed by the debtor and the creditor, then subject to anything to the contrary it would imply a promise to continue to pay interest at that rate on the balance confirmed. It is not necessary in such circumstance for an express and independent stipulation that the balance therein would be paid with interest. This must be implied. To hold to the contrary would run counter to the basis on and the purpose for which parties have accounts stated and deprive such documents of any commercial efficacy.

A catena of judgments of various Courts has affirmed the principle that implied in an account stated or accepted or settled is a promise to pay. The Privy Council in Bishun Chand v. Girdhari Lal , (affirmed by the Supreme Court in Cordon Woodroffe's case (supra) observed that an account stated gave rise to a promise to pay and was one of the most ordinary business facilities which has been common to everybody who carries on business under any system which incorporates any of the ordinary principles of English Contract Law. To hold that when an account stated contains intrinsic evidence of the rate at which interest has been paid and received without demur does not imply a promise to continue to pay interest at that rate would render this facility otiose and denude the commercial efficacy of such documents recognized by these judgments.”

(emphasis supplied)

31. In the backdrop of the aforesaid consideration, the quality of defence sought to be put-forth on behalf of the defendants assumes significance. As indicated above, the defence wavered, from total denial to contesting the quantum of liability by asserting that the payments which have been received by the plaintiffs were towards the principal amount as well as interest. In fact, defendant nos.3 and 4 attempted to wriggle out of the

situation by attempting to place the entire blame on defendant no.2; which the latter endeavoured to promptly dispel by filing an additional affidavit.

32. In the face of incontestible material to evidence the receipt of the amount of Rs.1 Crore, the defendants cannot be said to have raised a strong defence. One aspect which essentially warrants adjudication is the entitlement to interest at the rate claimed by the plaintiffs in the absence of stipulation as to payment of interest. To this extent, there arises a triable issue. However, the defendants cannot be granted an unconditional leave to defend the suit when there is material to show that the receipt of the principal amount of Rs.1 Crore is incontestible and borders on an admitted liability.

33. This propels me to the nature of the conditions, subject to which, the leave to defend is required to be granted. Mr. Master's submission that the plaintiffs are adequately protected by the order dated dated 21st December, 2020 in Interim Application (L) No.5696/2020 directing the defendants to deposit a sum of Rs.1 Crore in the Court, in the event, the defendants sale the property described in prayer Clause (b) of the said application, though alluring at first blush, does not merit acceptance unreservedly. In that event, the plaintiffs

would be left to the vicissitudes of litigative fortune. If the defendants intend to raise the funds, there is no restraint, at least, in the instant suit. In my view, it would be appropriate to grant leave to defend the suit subject to deposit of the principal amount of Rs.1 Crore. It is for the defendants to decide the manner in which they choose to finance the said deposit to be made in the Court.

34. Hence, the following order:

: O R D E R :

- (i) The defendants are granted leave to defend the suit on the condition of deposit of a sum of Rs.1 Crore within a period of six weeks from the date of this order.
- (ii) If the aforesaid deposit is made within the stipulated period, this suit shall be transferred to the list of Commercial Causes and the defendants shall file their written statement within a period of four weeks from the date of deposit;
- (iii) If this conditional order of deposit is not complied with, within the above stipulated period, the plaintiffs shall be entitled to apply for an *ex-parte* decree against the defendants after obtaining a non-deposit certificate from the Prothonotary and Senior Master of this Court.

(iv) The Summons for Judgment accordingly stands disposed.

[N. J. JAMADAR, J.]