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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment Reserved on : 1st April, 2022**
Judgment Delivered on : 27th April, 2022

+ **CS(COMM) 267/2021, I.A. No.7154/2021 (u/O-XXXIX R-1 & 2 of CPC), I.A. No.9340/2021 (of the defendant no.1 u/O-XXXVII R-3(5) of CPC), I.A. No.9341/2021 (of the defendant no.1 u/O-VII R-11(a) of CPC), I.A. No.15447/2021(u/O-XXXVII R-2(3) of CPC) & I.A. No.15448/2021 (u/O-XXXVII R-2(3) of CPC)**

**TRANSASIA PRIVATE CAPITAL
LIMITED & ANR.**

..... Plaintiffs

Through: Mr. Anish Dayal, Senior Advocate
with Mr. Atul Shanker Mathur, Ms.
Priya Singh, Mr. Umang Kataria and
Ms. Anwasha, Advocate.

versus

PARMANAND AGARWAL & ORS.

..... Defendants

Through: Mr. Ayush Negi with Ms. Varnita
Ojha, Advocates for D-1.

**CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL**

JUDGMENT

AMIT BANSAL, J.

1. The present suit is a summary suit instituted under Order XXXVII Rule 1 of Code of Civil Procedure, 1908 (CPC) for recovery of USD 3,906,479.33/-, along with interest, in favour of the plaintiffs and against the defendants no. 1 and 2 jointly and severally, on account of being the personal guarantors of the defendant no. 3.



BRIEF FACTS

2. In the suit, it has been pleaded that:

- (i) The plaintiff no. 1, TransAsia Private Capital Limited, is an asset management company, incorporated under the laws of Hong Kong, acting in its capacity as manager for and on behalf of Asian Trade Finance Fund, a sub-fund of TA Asian Multi-Finance Fund. The plaintiff no. 2, TA Private Capital Security Agent Ltd./TA Private Capital Ltd., is a company incorporated in the British Virgin Islands. The plaintiff no. 2 is the parent company of the plaintiff no. 1.
- (ii) The defendant no. 1, Mr. Parmanand Agarwal and the defendant no. 2, Mr. Rajeev Goel are personal guarantors pursuant to the Facility Agreement dated 4th July, 2017 entered between the defendant no. 3, Apple Overseas Pte. Ltd., a company incorporated in Singapore, and the plaintiff no. 1. As per the said Facility Agreement, an uncommitted revolving trade finance facility, up to maximum of USD 2,000,000.00/-, was extended in favour of the defendant no. 3 for the purposes of import financing of agricultural commodities and metal scraps. The plaintiff no. 2 is the security agent under the Facility Agreement dated 4th July, 2017. Both the defendants no. 1 and 2 are signatories to the said Facility Agreement. The defendants no. 1 and 2 have executed a Security Deed dated 23rd March, 2018 with the plaintiffs and the defendants no. 3, and a Personal Guarantee each dated 23rd March, 2018 in



favour of the plaintiff no. 2 in terms of the said Facility Agreement.

- (iii) The said Facility Agreement has thereafter been granted/amended/renewed by the Facility Letter dated 23rd March, 2018, Letter dated 4th December, 2018, Renewal Letter dated 13th March, 2019 and Side Letter dated 25th March, 2020.
- (iv) In terms of the aforesaid Facility Agreement, amounts were borrowed by the defendant no. 3 from the plaintiffs and which amounts, the defendant no. 3 has failed to repay.
- (v) On 10th June, 2020, a Notice was sent on behalf of the plaintiffs to the defendant no. 1 and the defendant no. 2 demanding payment of USD 3,401,839.08/- on or before 17th June, 2020. A similar notice was sent on the same date to the defendant no. 3.
- (vi) Upon failure of the defendants to pay the amounts claimed in the aforesaid Notice, a Statutory Demand dated 11th August, 2020 was sent on behalf of the plaintiffs to the defendants for a sum of USD 3,471,593.39/-.
- (vii) The plaintiffs filed a Statement of Claim for recovery before the High Court of the Republic of Singapore and upon no appearance having been entered by the defendants, the High Court of the Republic of Singapore vide judgment dated 6th November, 2020 in Case No.: HC/S 999/2020, directed the defendants to pay to the plaintiffs, a sum of USD 3,294,631.67/-, along with interest and costs of USD 2,500/-.
- (viii) An application against the aforesaid judgment was dismissed, along with costs of USD 6,000/-, by the High Court of the



Republic of Singapore vide order dated 22nd March, 2021.

3. On the basis of the aforesaid pleadings, the present summary suit was filed on behalf of the plaintiffs under Order XXXVII Rule 1 of the CPC against the defendants for recovery of sum of USD 3,906,479.33/-, being Rs.28,51,72,991/-, in Indian currency on the date of filing of the suit.

PROCEEDINGS IN THE SUIT

4. Summons in the suit were issued on 2nd June, 2021 and an *ex parte* ad interim injunction was passed by this Court in I.A. No.7154/2021, restraining the defendants no. 1 and 2 from selling, mortgaging, parting with possession, alienating or creating third party rights in respect of suit properties bearing Unit No. 410 - 411, 4th Floor, Pearls Corporate, Plot 9, Sector 3, Mangalam Place, Rohini, Delhi - 110085, owned by the defendant no. 1 and Unit No. 408 – 409, 4th Floor, Pearls Corporate, Plot 9, Sector 3, Mangalam Place, Rohini, Delhi – 110085 [noted as 408 – 411 in the order dated 2nd June, 2021 and in I.A. No.7154/2021].

5. I.A. No.15447/2021 and I.A. No.15448/2021 have been filed by the plaintiffs under Order XXXVII Rule 2(3) of the CPC in respect of the defendant no. 2 and the defendant no. 3 respectively, for passing of decree in favour of the plaintiffs.

6. Since the defendant no. 2 and the defendant no. 3 failed to enter appearance, despite summons being duly served, vide order dated 26th November, 2021, a decree was passed in favour of the plaintiffs and against the defendants no. 2 and 3 for recovery of the suit amount of Rs.28,51,72,991/-, along with the interest @ 6% per annum.

7. I.A. No.9340/2021, being the application seeking leave to defend



under Order XXXVII Rule 5 of the CPC, and I.A. No.9341/2021, being the application seeking rejection of the plaint under Order VII Rule 11(a) of the CPC, have been filed on behalf of the defendant no. 1 and in which applications notice was issued on 2nd August, 2021. Replies have been filed on behalf of the plaintiffs to the aforesaid applications.

SUBMISSIONS OF THE DEFENDANT NO. 1

8. The following grounds have been taken by the defendant no. 1 in I.A. No.9340/2021, being the application seeking leave to defend:

- I. This Court lacks territorial jurisdiction to entertain the present case.
- II. No cause of action has arisen for filing the present suit.

9. In respect of the submission that this Court lacks territorial jurisdiction to entertain the present case, the counsel for the defendant no. 1 has submitted as follows:

- i. The defendant no. 1 neither resides nor works for gain within the jurisdiction of this Court.
- ii. The cause of action for filing the present suit has not arisen within the territorial jurisdiction of this Court.
- iii. The Facility Agreement, the Personal Guarantee and the Security Deed were all executed in Singapore and were to be governed by the laws of Singapore.
- iv. The address of the property being given in the memo of parties to the plaint in respect of the defendant no. 1 does not belong to the defendant no. 1. In fact, the defendant no. 1 does not own any property in India. Reliance has been placed on a Deed of



Sale Agreement dated 27th May, 2020 entered between M/S AKG Exim Ltd. and M/S AKG Engineers Pvt. Ltd. in respect of property bearing Unit No. 409, 4th Floor, Pearls Corporate, Plot 9, Sector 3, Mangalam Place, Rohini, Delhi – 110085 to show that the defendants do not own the said property.

10. In respect of the submission that no cause of action has arisen for filing the present suit, the counsel for the defendant no. 1 has submitted as follows:

- i. The present suit has been instituted on the basis of a foreign judgment i.e., judgment dated 6th November, 2020 passed by the High Court of the Republic of Singapore. In view of the fact that aforesaid judgment is an *ex parte* judgment against the defendants, the same cannot constitute a valid cause of action in terms of Section 13 of the CPC.
- ii. The remedy of the plaintiffs was to file for the execution of a foreign judgment in terms of Section 44A of the CPC.
- iii. Reliance has been placed on the judgments in *T. Arivandandam Vs. T.V. Satyapal and Anr.*, (1977) 4 SCC 467 and *Subodh Kumar Gupta Vs. Shrikant Gupta and Ors.*, (1993) 4 SCC 1.

SUBMISSIONS OF THE PLAINTIFFS

11. Opposing the present applications, the senior counsel appearing on behalf of the plaintiffs has made following submissions:

- i. In the application seeking leave to defend, no denial whatsoever has been made of the liability of the defendant no. 1 towards the



plaintiffs. The said application only raises issues of territorial jurisdiction. Once the defendant no. 1 admits his liability, he cannot be permitted to take defences of technical nature. Reliance in this regard is placed on the judgments in **DAP Buildcon Pvt. Ltd. Vs. B.B. Lal Aggarwal**, MANU/DE/3386/2016, **Shradha Wassan and Ors Vs. Anil Goyal and Ors.**, MANU/DE/0490/2009 and **Modipon Limited. Vs. Singhal Transport Corpn.**, MANU/DE/3344/2011 (DB) [against which Special Leave Petition (Civil) No.34886/2011 has been dismissed on 9th January, 2012].

- ii. A categorical assertion has been made in the plaint that the defendants no. 1 and 2 reside and/or carry on business within the jurisdiction of this Court.
- iii. There has been no denial on behalf of the defendant no. 1 that he 'works for gain' at the aforesaid address.
- iv. Summons were duly served on the defendants no. 1 and 2 by both speed post and courier at the address at Rohini, Delhi. The plaintiffs have filed affidavit of service dated 22nd September, 2021, along with speed post and courier receipts in respect of the said address. Pursuant to said service, the counsel entered appearance on behalf of the defendant no. 1 on 2nd August, 2021 and has filed the present applications.
- v. All the agreements between the plaintiffs and the defendants permit the plaintiffs to take proceedings in one or more jurisdictions concurrently. Reliance in this regard is placed on the judgment of this Court in **Rasmala Trade Finance Fund**



Vs. Raman Gupta, 2019 SCC OnLine Del 9285 [against which FAO(OS) (COMM) 293/2019 has been dismissed on 18th November, 2020].

- vi. Reliance has been placed on the records from the portal of the Ministry of Corporate Affairs (MCA) as well as the draft prospectus of M/S AKG Exim Ltd. dated 23rd May, 2018, which reflect that the defendant no. 1 is a substantive shareholder and director of the aforesaid Company.

12. On the basis of the above, it is submitted on behalf of the plaintiffs that the defence raised by the defendant no. 1 is illusory and frivolous and therefore, the leave to defend should not be granted to the defendant no. 1. Without prejudice, even if the leave is to be granted to the defendant no. 1, it should be a conditional leave to defend, directing the defendant no. 1 to deposit a substantial amount of security before the Court. Further, there is no merit in the application filed for rejection of plaint under Order VII Rule 11(a) of the CPC and the same is liable to be rejected. Reliance in this regard is placed on the judgments of the Supreme Court in *IDBI Trusteeship Services Limited Vs. Hubtown Limited*, (2017) 1 SCC 568, and *B.L. Kashyap and Sons Ltd. Vs. JMS Steels and Power Corporation and Anr.*, 2022 SCC OnLine SC 59.

OBSERVATIONS AND FINDINGS

13. I have heard the counsels for the parties.

14. A perusal of the present applications filed on behalf of the defendant no. 1 would show that there has been no dispute raised on behalf of the defendant no. 1 with regard to the amounts claimed in the suit. The



defendant no. 1 has nowhere denied its liability to pay the amounts claimed in the suit. The main ground taken for grant of leave to defend as well as rejection of plaint under provisions of Order VII Rule 11(a) of the CPC, are that this Court lacks territorial jurisdiction to entertain the present suit and the present suit is an attempt to execute the judgment dated 6th November, 2020 of the High Court of the Republic of Singapore, and is therefore, not maintainable.

15. At the outset, it may be apposite to refer to the relevant clauses of the Personal Guarantee dated 23rd March, 2018 executed by the defendant no. 1 in favour of the plaintiff no. 2. Clause 18 of the Personal Guarantee provides for the applicable law and jurisdiction and the same is reproduced below:

“18. APPLICABLE LAW AND JURISDICTION

18.1 This Guarantee shall be governed by and construed in accordance with Singapore law.

*18.2 The Guarantor hereby irrevocably agrees for the exclusive benefit of the Security Agent that the Singapore courts shall have exclusive jurisdiction in relation to any dispute and any suit, action or proceeding (referred to together in this Clause 18 as “**Proceedings**”) which may arise out of or in connection with this Guarantee and for such purposes irrevocably submits to the jurisdiction of such courts.*

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18.4 Nothing in this Clause 18 shall affect the right of the Security Agent to serve process in any manner permitted by law or limit the right of the Security Agent to take Proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdiction preclude the taking of Proceedings by the Security Agent in any other



jurisdiction, whether concurrently or not.

18.5 The Guarantor irrevocably waives any objection which he may now or hereafter have on the grounds of inconvenient forum or otherwise to Proceedings being brought in any such court as is referred to in this Clause 18, and further irrevocably agrees that a judgment or order in any Proceedings brought in Singapore courts shall be conclusive and binding upon the Guarantor and may be enforced without review in the courts of any other jurisdiction.”

16. Similarly, reference may also be made to Clauses 16 and 17 of the Security Deed dated 23rd March, 2018 executed between the plaintiffs and the defendants, which are set out below:

“16. GOVERNING LAW

This Deed and all matters arising from or connected with it are governed by Singapore law.

17. ENFORCEMENT

17.1 The courts of Singapore have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a “Dispute”).

17.2 *The Parties agree that the courts of Singapore are the most appropriate and convenient courts to settle Disputes and accordingly the Obligors will not argue to the contrary.*

17.3 This Clause 17.3 is for the benefit of the Security Agent only. As a result, the Security Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts in jurisdiction. To the extent allowed by law, the Security Agent may take concurrent proceedings in any number of jurisdiction.”



17. A reference to the aforesaid Clauses demonstrates that the parties had agreed that the Singapore Courts would only have ‘non-exclusive jurisdiction’ in respect of disputes arising out of the aforesaid Agreements/Deeds. It is also specifically provided in Clause 17.3 of the Security Deed dated 23rd March, 2018 that the plaintiff no. 2, being the security agent, shall not be prevented from filing proceedings in any other Court with jurisdiction. Concurrent jurisdictions of courts of different jurisdictions have been specifically recognized in the aforesaid Agreements/Deeds.

18. Clause 18.5 of the Personal Guarantee specifically records that the guarantor, being the defendant no. 1, waives any objections with regard to the proceedings being brought in any competent Court that may be initiated by the security agent, being the plaintiff no. 2. Hence, there is no merit in the contention of the defendant no. 1 that the jurisdiction would vest exclusively with the Singapore Courts or that the plaintiffs having already filed legal proceedings in the competent Courts of the Republic of Singapore and having obtained a decree, are barred from filing proceedings before any other Court. In terms of the Explanation to Section 10 of the CPC, pendency of a suit in foreign jurisdiction does not preclude the Courts in India from trying a suit based on the same cause of action.

19. The defendant no. 1 has not denied the existence of the Facility Agreement, the Security Deed, the Personal Guarantees or the receipt of the Demand Letters. The said Agreements/Guarantees duly bear the signatures of the defendants, which they have not denied. Nor have the defendants denied that the monies were received pursuant to the said Agreements, had to be returned back and the defendants have failed to return back the said



monies. The defendant no. 1 has signed the aforesaid documents in his capacity as the director of the defendant no. 3 being the borrower, and as a co-guarantor.

20. Reference may be made to the judgment of this Court in ***Rasmala Trade Finance Fund*** (supra), wherein the Court was seized with a facility agreement and a personal guarantee mirroring the clauses of the Facility Agreement and Personal Guarantee of the present case. Relevant paragraphs 20, 21 and 49 are set out below:

“21. A perusal of the above two clauses shows that while the facility agreement provides for the Courts of UAE to have jurisdiction, the personal guarantee executed by the Defendant has a clear stipulation that the financier i.e., the Plaintiff would have right to take proceedings against the guarantor, i.e., the Defendant in any other Court of competent jurisdiction. The clause in the facility agreement does not confer exclusive jurisdiction in the UAE Courts...

22. Thus, even if words such as ‘only’ ‘exclusive’ etc., are not used, the same can be read by the court to be exclusive jurisdiction. However, the clause in the present case is clearly distinguishable on facts. In the personal guarantee, it has been clearly agreed between the parties that the Plaintiff would have the right to initiate proceedings against the guarantor in any ‘other’ Court of competent jurisdiction - any court other than Dubai which has jurisdiction. Admittedly, the Defendant is a resident of Delhi, his assets are also in Delhi. He lives with his family in Delhi. The company - M/s. Met Trade, though a Dubai based company, one of the shareholders of the said company is an Indian company - Metenere Limited which is primarily held by the Defendant and his family members. Thus, in view of the clear clause in the personal guarantee executed by the Defendant and both, the agreement and the personal guarantee being admitted documents, it is held that this Court has the jurisdiction to entertain the present suit.



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49. In the light of the above admissions by the Defendant, it is clear that the Defendant is not entitled to unconditional leave to defend. The execution of the first agreement, the extension of the same to additional amounts, the signatures on the same, are all admitted. The objection as to jurisdiction which is one of the main planks of the Defendant's case is also not tenable as held above. The grievance of the Defendant is, in fact, to the effect that further 6 million USD which were to be disbursed, were not disbursed which led to stoppage of transactions of the Plaintiff."

21. In the present case also, as stated aforesaid, as per the Clauses extracted above, only a non-exclusive jurisdiction has been given to the Singapore Courts. Under the Personal Guarantee, the plaintiff no. 2 has been given the right to proceed against the defendants in any other court of competent jurisdiction, which would include this Court. Therefore, proceedings before the Singapore Courts would not be a bar to the present proceedings.

22. Next, I would deal with the issue whether this Court has the jurisdiction to entertain the present suit. In the memo of parties filed along with present suit, the plaintiffs have given one of the addresses of the defendant no. 1 as the address at Unit No. 410 - 411, 4th Floor, Pearls Corporate, Plot 9, Sector 3, Mangalam Place, Rohini, Delhi – 110085 and one of the addresses of the defendant no. 2 as the address at Unit No. 408 - 409, 4th Floor, Pearls Corporate, Plot 9, Sector 3, Mangalam Place, Rohini, Delhi – 110085 (collectively hereinafter referred to as the 'Rohini Address'). It has further been averred in paragraph 24 of the plaint that the defendants



no. 1 and 2 reside and/or carry on business within the jurisdiction of this Court.

23. It is also an admitted position that summons in the present suit were duly received on behalf of the defendants no. 1 and 2 at the Rohini Address. Along with the affidavits of service dated 16th August, 2021 and 22nd September, 2021 filed on behalf of the plaintiffs, the plaintiffs have annexed speed post receipts as well as courier receipts, along with the tracking report, in respect of the speed post as well as the courier dispatch showing that summons were duly served on the defendants no. 1 and 2 at the Rohini Address. Not only were the summons received at the Rohini Address, the counsel entered appearance on behalf of the defendant no. 1 based on the aforesaid service and has filed the present applications. Nowhere has it been claimed on behalf of the defendant no. 1 that the defendant no. 1 was wrongly served at the Rohini Address. If the defendant no. 1 was wrongly served on the aforesaid address, this fact would have been stated in the application seeking leave to defend or in the affidavit filed in support of the said application. The plaintiffs have shown sufficient connection between the Company M/s. AKG Exim Ltd., the owner of the property at the Rohini Address and the defendant no. 2, being a director of the aforesaid Company and the defendant no. 1 being a substantive shareholder of the aforesaid Company to show that the defendants no. 1 and 2 were working for gain at the aforesaid Rohini Address.

24. The Deed of Sale Agreement dated 27th May, 2020 filed on behalf of the defendant no. 1 purportedly transferring title of the property bearing Unit No. 409, 4th Floor, Pearls Corporate, Plot 9, Sector 3, Mangalam Place, Rohini, Delhi – 110085 from M/S AKG Exim Ltd. to M/S AKG Engineers



Pvt. Ltd. is an unregistered document executed on a stamp paper of Rs.50/- and does not inspire confidence. Clearly, the aforesaid Agreement has been executed only to show that the defendants no. 1 and 2 have no connection with the property at the Rohini Address.

25. The defendant no. 1, in I.A. No.9341/2021, seeking rejection of the plaint under Order VII Rule 11(a) of the CPC, has merely averred that the property at the Rohini Address given in the plaint “doesn’t belong to the Defendant No.” and “the defendant No 1 currently has no property in India”. Nowhere has the defendant no. 1 denied the fact that he works for gain within the jurisdiction of this Court. Even if the defendant no. 1 does not own the property at the Rohini Address, he could still work for gain there. In his affidavit in support of the aforesaid application, the defendant no. 1 does not give a permanent address, but only states that he is currently at Benin, a country in Africa. It is clear that the defendant no. 1 is playing hide and seek with the Court in order to prevent a decree being passed against him. If the defence was bonafide, the defendant no. 1 would have provided the particulars of his place of residence or work.

26. There is no merit in the submission of the defendant no. 1 that the present suit has been filed only on the basis of the judgment dated 6th November, 2020 of the High Court of the Republic of Singapore. A holistic reading of the plaint would show that the present suit is not based on the judgment dated 6th November, 2020 of the High Court of the Republic of Singapore. It is an independent commercial suit, filed as a summary suit under Order XXXVII Rule 1 of the CPC. Even *dehors* the aforesaid judgment of the High Court of the Republic of Singapore, the cause of action for filing the present suit is made out in the plaint.



27. As regards the application made on behalf of the defendant no. 1 under Order VII Rule 11(a) of the CPC, it is a settled position of law that while deciding an application under Order VII Rule 11 of the CPC, reference has to be made only to the plaint and the documents filed along with the plaint.

28. In view of the clear and categorical averments made in the plaint that the defendants no. 1 and 2 reside and work for gain within the territorial jurisdiction of this Court, nothing further is required to be seen. Paragraph 24 of the plaint is set out below:

“24. This Hon’ble Court has territorial jurisdiction to try the present suit as the Defendant Nos. 1 and 2 reside and/or carry on business within the jurisdiction of this Hon’ble Court. This Hon’ble Court also has pecuniary jurisdiction to try the present Suit.”

29. Reliance placed by the defendant no. 1 on the judgment in ***T. Arivandandam*** (supra) is completely misplaced as there is nothing to suggest that the plaint in the present case is vexatious or meritless or does not disclose a right to sue. Similarly, the judgment in ***Subodh Kumar Gupta*** (supra) has no relevance to the facts and circumstances of the present case. In the said case, there were no averments in the plaint that the defendants were involved in carrying on business at Chandigarh, whereas in the present case, a specific averment has been made in the plaint that the defendants no. 1 and 2 reside and/or carry on business within the jurisdiction of this Court.

30. The Co-ordinate Bench of this Court in ***DAP Buildcon Pvt. Ltd.*** (supra), while dismissing an application seeking leave to defend in the suit under Order XXXVII of the CPC, has observed that once a defendant admits his liability in respect of the sum claimed in the suit, the defendant cannot be



allowed to take a defence of technical nature, such as lack of territorial jurisdiction.

31. In this regard, reference may also be made to the observations in ***Shradha Wassan and Ors.*** (supra), which was also delivered in the context of deciding an application seeking leave to defend filed by the defendant in a summary suit under Order XXXVII of the CPC. Observations of the Court in paragraph 17 of the judgment are set out below:

“17. Reference in this regard be also made to L.N.Gupta v. Smt. Tara Mani MANU/DE/0159/1983 : AIR1984Delhi49 where also after a review of the entire case law including the judgments of the other courts it was held that the principle of ‘Debtor must seek creditor’ is applicable to India. However, an exception was carved out with respect to the promissory notes. Another thing which is relevant is that the plea of territorial jurisdiction in this case is raised in an application for leave to defend. The criteria for determining the said plea in an application for leave to defend would be different from the criteria when such a plea is raised otherwise. While the ground by challenging the territorial jurisdiction of the court, unless a clear case of ouster of jurisdiction is made out, leave ought not to be granted on such a plea. In the present case on the applicability of the general doctrine aforesaid, no case for granting leave to defend is made out.”

32. In ***IDBI Trusteeship Services Limited*** (supra), the Supreme Court has elucidated the principles on which the leave to defend has to be granted in summary suits filed under Order XXXVII of the CPC. Paragraph 17 of the said judgment is reproduced below:

“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 Milkiram case, as follows:



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

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

17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

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

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

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



33. In my view, the present case is squarely covered by paragraph 17.5 of the judgment of the Supreme Court in *IDBI Trusteeship Services Limited* (supra) and the judgment of this Court in *Rasmala Trade Finance Fund* (supra). There has been no denial of the liability of the defendant no. 1 and furthermore, the defendant no. 1 has failed to make out a case for the ouster of the jurisdiction of this Court. Once the defendant no. 1 admits his liability and there is no dispute with respect thereto, the defendant no. 1, is required to pay the money to the plaintiffs and the defendant no. 1, being in default in spite of admitting liability, cannot be permitted to take defence of such technical nature. Therefore, no case for grant of leave to defend is made out and the suit is liable to be decreed in favour of the plaintiffs and against the defendant no. 1.

34. Accordingly, in view of the above, I.A. No.9341/2021, being the application seeking rejection of the plaint under Order VII Rule 11(a) of the CPC and I.A. No.9340/2021, being the application seeking leave to defend under Order XXXVII Rule 5 of the CPC are dismissed.

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35. In light of the application of the defendant no. 1 seeking leave to defend having been dismissed, the plaintiffs have become entitled to a decree forthwith.

36. Considering the entirety of the facts, and the fact that vide order dated 26th November, 2021, a decree was passed in favour of the plaintiffs and against the defendants no. 2 and 3 for recovery of the suit amount of Rs.28,51,72,991/- with the interest @ 6% per annum, it is deemed appropriate to decree the suit against the defendant no. 1 for recovery of the



suit amount of Rs.28,51,72,991/-, with the interest @ 6% per annum. The plaintiffs are also awarded costs of the suit.

37. Decree sheet be drawn up.
38. All pending applications stand disposed of in above terms.

AMIT BANSAL, J.

APRIL 27, 2022

Sakshi R./ak

