

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION  
SUMMONS FOR JUDGMENT NO. 48 OF 2021  
IN  
COMM SUMMARY SUIT NO. 225 OF 2020**

Rithika Enterprises and anr. ...Applicants

**In the matter between**

Rithika Enterprises and anr. ...Plaintiffs

**Versus**

Garment Packers and ors. ...Defendants

**WITH  
INTERIM APPLICATION (L) NO. 26655 OF 2022**

Mr. Vivek Kantawala, a/w Amey Patil, i/b M/s. Vivek Kantawala & Co., for  
the Applicants/Plaintiffs.

Mr. Rohan Cama, a/w Ms. Anandpara, i/b Mr. Girish Kedia, for Defendant  
Nos.1 and 3.

Mr. Vipul Shukla, for Defendant No.2.

**CORAM: N. J. JAMADAR, J.**

**RESERVED ON : 18<sup>th</sup> OCTOBER, 2022**

**PRONOUNCED ON: 31 JANUARY, 2023**

**ORDER:-**

**1.** This commercial division summary Suit is instituted for recovery of a sum of Rs.2,15,25,000/- alongwith future interest on the principal amount of Rs.1,50,00,000/- on the strength of dishonored cheque.

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

(a) Plaintiff No.2 is the proprietor of Rithika Enterprises. Defendant No.3 is the Proprietor of defendant No.1 Garment Packers ("Garment"). Defendant No.2 Tejora Technologies Limited ("Tejora") is a Company registered under the Companies Act, 1956.

(b) Defendant No.3 developed a friendly relationship with plaintiff No.2 through the latter's daughter. At the request of defendant No.3 the plaintiff had advanced money to defendant No.3. In the year 2016, defendant No.3 again requested the plaintiffs to advance money. Thus, at the request of defendant No.3, the plaintiffs remitted a sum of Rs.1 Crore on 5<sup>th</sup> January, 2016 to the account of defendant No.1 - Garment. A further sum of Rs.50,00,000/- also came to be credited to the account of Garment on 24<sup>th</sup> June, 2016. Defendant No.3 had assured to repay the amount alongwith interest.

(c) Initially defendant No.3 did pay interest. Later on, defendant No.3 committed default in payment of interest since the month of July, 2017. Upon relentless persuasion by the plaintiff, defendant No.3 issued a cheque for an amount of Rs.1,18,00,000/- drawn on Shamrao Vitthalrao Co-operative Bank, payable on 28<sup>th</sup> January, 2019, towards the repayment of principal amount. However, upon presentment, the cheque was returned unencashed with the remarks 'account closed'. Thereupon the plaintiffs addressed a legal notice dated 3 January 2020 to the defendants calling upon them to pay amount covered by the cheque. Vide reply dated 16<sup>th</sup> January, 2020, defendant No.3 raised a false defence by concocting a story that he was a mere conduit and all the monies paid by the plaintiffs to defendant No.3 were transferred to the account of defendant No.2 - Tejora, for whom the money was actually intended to be transferred. Tejora, in turn, contended that it had never received the said amount of Rs.1,50,00,000/-, and that defendant No.3 had

resigned from Tejora in the month of September, 2017 and, thus, Tejora had no concern whatsoever with the transaction in question.

(d) The plaintiffs further assert that defendant No.3 has not only paid interest on the amount advanced but has also admitted in the correspondence exchanged between the parties that the amount was indeed transferred to the account of defendant No.1. Hence, this suit for recovery of the outstanding amount alongwith accrued interest thereon.

**3.** In response to the service of writ of summons, the defendants entered appearance. Thereupon the plaintiffs took out the Summons for Judgment.

**4.** Defendant Nos.1 and 3 filed an affidavit-in-reply seeking unconditional leave to defend the suit. The substance of the resistance put-forth by defendant No.3 is that he was working as an Executive Director of Tejora, of which Mr. Nitin Shenoy was the Chief Managing Director. There was proximity between Mr. Nitin Shenoy and the daughter of plaintiff No.2. Both of them used to frequently visit Dubai and stay thereat. As the defendant No.3 reposed full faith and trust in Mr. Nitin Shenoy, in the month of June 2015, he had shared the details of the Bank accounts of Garment. On 11<sup>th</sup> June, 2015, a sum of Rs.45,00,000/- came to be remitted to the account of Garment and, on the very day, at the instructions of Mr. Nitin Shenoy and the daughter of the plaintiff No.2, the said amount was transferred to the account of Tejora. Though surprised at the *modus operandi* defendant No.3 did not object as he had a very thick relationship with Mr. Nitin Shenoy. As a part of the said

*modus operandi*, according to defendant No.3, in the month of January, 2016, a sum of Rs.1 Crore came to be remitted to the account of Garment and a further sum of Rs.50,00,000/- in the month of June, 2016 and those amounts were instantaneously transferred to the account of Tejora. The payment of various amounts by defendant No.3 to the plaintiff, according to defendant No.3, was also in pursuance of said exercise of routing the money at the behest of Mr. Nitin Shenoy and the daughter of plaintiff No.2.

**5.** Defendant No.3 further contends that on 9<sup>th</sup> April, 2017, in an unfortunate incident at Dubai, Nitin Shenoy died by drowning in ocean water. After the death of Nitin Shenoy, his wife started to manage the affairs of Tejora. Defendant No.3 made an attempt to persuade the wife of late Nitin Shenoy to reconcile the accounts and pay the balance amount. In the meanwhile, late Nitin's wife learnt about the proximity of the daughter of plaintiff No.2 with late Nitin Shenoy and defendant No.3 was made to resign from Tejora. In substance, defendant No.3 claims that he had never availed any loan from the plaintiffs and he had acted as a conduit for late Nitin. He had not known plaintiff No.2 and had only met the daughter of plaintiff No.2, who has acknowledged, in a series of chats, that the real transaction was between her and late Nitin Shenoy.

**6.** An Affidavit in Rejoinder is filed by the Plaintiffs controverting the contentions in the Affidavit in Reply.

7. In the light of the aforesaid pleadings, I have heard Mr. Kantawalla, learned Counsel for the Plaintiffs, and Mr. Rohaan Cama, learned Counsel for the Defendant Nos.1 and 3 at some length. The learned Counsel took the Court through the relevant pleadings and the documents tendered for the perusal of the Court.

8. Mr. Kantawalla submitted that the present is an open and shut case of dishonour of the cheque issued towards repayment of the loan. The defence that the real transaction was between Mr. Nitin Shenoy and the daughter of the complainant is a figment of imagination, to evade the liability, which is otherwise substantiated by documents of unimpeachable character. Mr. Kantawalla would urge that there is no dispute over the fact that a sum of Rs.1,50,00,000/- was transferred to the account of Defendant No.3 by the Plaintiffs through the banking channel. Issue and presentment of the subject cheque and its dishonour are also not in contest.

9. An endeavour on the part of the Defendants to demonstrate that the Plaintiffs have abused the custody of the signed blank cheque, according to Mr. Kantawalla, in the light of the development of law, does not merit countenance. Mr. Kantawalla placed a strong reliance on the judgment of the Supreme Court in the case of **Oriental Bank of Commerce V/s. Prabodh Kumar Tewari**<sup>1</sup> wherein after tracing the development of law on the aspect of the misuse of the custody of the signed blank cheque; a defence which is often raised, it was

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1 2022 SCC Online SC 1089

enunciated that even if the details in the cheques have not been filled up by the drawer, but by another person, that was not relevant to the defence whether cheque was issued towards payment of a debt or in discharge of a liability.

**10.** Mr. Kantawalla further submitted that the fact that the post receipt of credit from the Plaintiffs, the amount was transferred to the account of the Defendant No.2 from the account of Defendant No.3, is of no consequence as, at best, that would be a matter between the Defendant Nos.1 and 3 and Defendant No.2 inter se. On the strength of the subsequent transfer of the amount, according to Mr. Kantawalla, an inference that the Defendant No.3 was a mere conduit cannot be drawn.

**11.** Banking upon the dishonoured cheque and failure to pay the amount covered by the said cheque, despite demand notice, the service of which is indubitable, Mr. Kantawalla urged that a decree must follow.

**12.** Mr. Cama stoutly submitted that in the facts of the case at hand, the Defendants deserve an unconditional leave to defend the suit as the defence that the account of Defendant No.3 was used for routing money by Mr. Nitin Shenoy and the daughter of the complainant, is substantiated by contemporaneous entries in the account extracts. Drawing heavily upon the transfer of the amount to the account of Tejora, no sooner the amounts were credited to the account of Garment from the Plaintiffs, Mr. Cama would urge that no other inference than that of the Garment's account having been used as a conduit, can be drawn. In the circumstances, according to Mr Cama,

Defendant Nos.1 and 3 can be said to have succeeded in demonstrating defence which is fair and reasonable, if not substantial one.

**13.** In addition, Mr Cama laid emphasis on the conversation between the daughter of the Plaintiff No.2 and Defendant No.1, the transcript of which is annexed to the Affidavit in Reply. Mr. Cama submitted that the tenor of the transcript of conversation would unmistakably indicate the real nature of the transaction and the parties thereto.

**14.** Mr. Cama submitted that a triable issue as to the nature of the transaction and the liability of Defendant Nos.1 and 3 has been raised by Defendant Nos.1 and 3. Thus, the test to grant unconditional leave can be said to have been satisfied. Therefore, the Defendants deserve an unconditional leave to defend the Suit. Mr. Cama placed reliance on the judgment of the Supreme Court in the case of Raj Duggal V/s. Ramesh Kumar Bansal<sup>2</sup> wherein the test for grant or refusal of the leave to defend the suit was succinctly formulated.

**15.** Mr. Kantawalla joined the issue by canvassing a submission that the defence sought to be raised on behalf of the Defendant Nos.1 and 3 borders on character assassination; which can never justify grant of leave to defend. As a second limb, it was submitted that in the alleged conversation, which is sought to be banked upon by the Defendant Nos.1 and 3, the Plaintiffs are nowhere in the frame, and, therefore, by pressing into service an imaginary defence based

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<sup>2</sup> (1991) Supp (1) SCC 191

on some unauthenticated conversation, Defendant Nos.1 and 3 do not deserve leave to defend.

**16.** I have given anxious consideration to the rival submissions. Before advertent to deal with the aforesaid submissions, it may be apposite to note that the credit of the amount of Rs.1,50,00,000/- in the account of Garment by the Plaintiffs is incontestible. Secondly, there is not much controversy over the fact that, over a period of time, a sum of Rs.38 Lakhs came to be repaid to the Plaintiffs from the said account. Thirdly, the fact that the subject cheque was drawn on an account maintained by Defendant No.3 and, upon presentment, the said cheque was dishonoured with the remarks 'account closed' is also indisputable.

**17.** Defendant Nos.1 and 3 contend that the aforesaid transactions including the return of the sum of Rs.38 Lakhs, were at the behest of Nitin Shenoy and the money did not stay with Defendant Nos.1 and 3, for even a short period, as Garment was a mere conduit. Whether this defence justifies the grant of leave to defend is the pivotal question.

**18.** The tests to be applied while considering a prayer for grant of leave to defend under Order XXXVII of the Code of Civil Procedure, 1908, are well settled. In cases where the Court finds that the Defendant has raised a substantial or reasonable and fair defence, grant of an unconditional is the norm. Where the Defendant succeeds in demonstrating that the defence raises a triable issue, then also the Defendant is entitled to an unconditional leave.

Conversely, in a case where the defence appears to be sham and moon shine, the Court would be justified in declining to grant leave and pass a judgment. Where the Court upon consideration of the material comes to the conclusion that the defence, though raises a triable issue, yet the Court is not satisfied about the bonafides of the defence, the Court may grant leave upon the conditions of making a deposit and/or stipulate the conditions for trial.

**19.** The course to be adopted by the Court, thus, hinges upon the nature and quality of the defence sought to be put forth by the Defendant. The test for granting or refusal to grant leave was succinctly postulated by the Supreme Court in the case of **Raj Duggal (supra)** in the following words :

“3. Leave is declined where the Court is of the opinion that the grant of leave would merely enable the defendant to prolong the litigation by raising untenable and frivolous defences. The test is to see whether the defence raises a real issue and not a sham one, in the sense that if the facts alleged by the Defendant are established there would be a good or even a plausible defence on those facts. If the Court is satisfied about that leave must be given. If there is a triable issue in the sense that there is a fair dispute to be tried as to the meaning of a document on which the claim is based or uncertainty as to the amount actually due or where the alleged facts are of such a nature as to entitle the defendant to interrogate the Plaintiff or to cross-examine his witnesses leave should not be denied. Where also, the Defendant shows that even on a fair probability he was a bonafide defence, he ought to have leave. Summary judgments under Order XXXVII should be granted where serious conflict as to matter of fact or where any difficulty on issues as to law arises. The Court should not reject the defence of the defendant merely because of its inherent implausibility of its inconsistency.”

**20.** It would be advantageous to refer to a recent judgment of the Supreme Court in the case of *B. L. Kashyap and Sons Limited vs. JMS Steels and Power Corporation and another*<sup>3</sup>, wherein after considering the previous pronouncements including the judgments of the Supreme Court in the cases of *Mechalec Engineers & Manufacturers vs. Basic Equipment Corporation*<sup>4</sup> and *IDBI Trusteeship Services Ltd vs. Hubtown Ltd.*<sup>5</sup>, the Supreme Court enunciated the governing principles which determine the grant of leave to defend the suit in the following words :

“33. It is at once clear that even though in the case of IDBI Trusteeship, this Court has observed that the principles stated in paragraph 8 of Mechelec Engineers’ case shall stand superseded in the wake of amendment of Rule 3 of Order XXXVII but, on the core theme, the principles remain the same that grant of leave to defend (with or without conditions) is the ordinary rule; and denial of leave to defend is an exception. Putting it in other words, generally, the prayer for leave to defend is to be denied in such cases where the defendant has practically no defence and is unable to give out even a semblance of triable issues before the Court.

**33.1** As noticed, if the defendant satisfies the Court that he has substantial defence, i.e., a defence which is likely to succeed, he is entitled to unconditional leave to defend. In the second eventuality, where the defendant

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3 (2022) 3 Supreme Court Cases 294.

4 (1976) 4 SCC 687.

5 (2017) 1 SCC 568.

raises triable issues indicating a fair or bonafide or reasonable defence, albeit not a positively good defence, he would be ordinarily entitled to unconditional leave to defend. In the third eventuality, where the defendant raises triable issues, but it remains doubtful if the defendant is raising the same in good faith or about genuineness of the issues, the Trial Court is expected to balance the requirements of expeditious disposal of commercial causes on one hand and of not shutting out triable issues by unduly severe orders on the other. Therefore, the Trial Court may impose conditions both as to time or mode of trial as well as payment into the Court or furnishing security. In the fourth eventuality, where the proposed defence appear to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also of payment into the Court or furnishing security or both, which may extend to the entire principal sum together with just and requisite interest.

**33.2** Thus, it could be seen that in the case of substantial defence, the defendant is entitled to unconditional leave; and even in the case of a triable issue on a fair and reasonable defence, the defendant is ordinarily entitled to unconditional leave to defend. In case of doubts about the intent of the defendant or genuineness of the triable issues as also the probability of defence, the leave could yet be granted but while imposing conditions as to the time or mode of trial or payment or furnishing security. Thus, even in such

cases of doubts or reservations, denial of leave to defend is not the rule; but appropriate conditions may be imposed while granting the leave. It is only in the case where the defendant is found to be having no substantial defence and/or raising no genuine triable issues coupled with the Court's view that the defence is frivolous or vexatious that the leave to defend is to be refused and the plaintiff is entitled to judgment forthwith. Of course, in the case where any part of the amount claimed by the plaintiff is admitted by the defendant, leave to defend is not to be granted unless the amount so admitted is deposited by the defendant in the Court.

33.3 Therefore, while dealing with an application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the rule or that the leave to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues, with the defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave. It gets perforce reiterated that even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated above could be imposed while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the defendant fails to show any genuine triable issue and

the Court finds the defence to be frivolous or  
vexatious.” (emphasis supplied)

**21.** On the aforesaid touchstone, reverting to the facts of the case, it has to be seen whether the Defendants have succeeded in raising such a defence which warrants leave to defend. The onus on the Defendants in the face of the dishonoured cheque, which forms the foundation of the summary suit, appears to be relatively heavy. A case based on a dishonoured cheque stands on a different footing than a case based on other document. With the dishonour of the cheque, number of presumptions came to the fore. A bald defence that the cheque was not drawn in discharge of legally enforceable debt or liability may not sustain grant of leave to defend. The defendant who seeks leave to defend the summary suit based on dishonoured cheque has to satisfy the conscious of the Court that there is an element of uncertainty about the enforceability of the debt covered by the dishonoured cheque.

**22.** A useful reference in this context can be made to a judgment of the Supreme Court in the case of **V.K.Enterprises and Anr. V/s. Shiva Steels**<sup>6</sup> wherein the Supreme Court expounded the considerations which weigh with the Court while granting leave to defend in a case based on a dishonoured cheque. The observations in paragraphs 10 and 11 are material and hence extracted below :

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<sup>6</sup> (2010) 9 SCC 256

“10. Order 37 CPC has been included in the Code of Civil Procedure in order to allow a person, who has a clear and undisputed claim in respect of any monetary dues, to recover the dues quickly by a summary procedure instead of taking the long route of a regular suit. The Courts have consistently held that if the affidavit filed by the defendant discloses a triable issue that is at least plausible, leave should be granted, but when the defence raised appears to be moonshine and sham, unconditional leave to defend cannot be granted.

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

(emphasis supplied)

**23.** Following the aforesaid judgment, a Division Bench of this Court in the case of **Rajesh Laxmichand Udeshi @ Bhatia V/s. Pravin Hiralal Shah**<sup>7</sup> postulated that a summary suit based on a dishonoured cheque stands on a higher footing than a summary suit instituted on the basis of other document. In the former, the court is enjoined to consider the effect of the statutory

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<sup>7</sup> (2013) 2 AIR Bom R 1146

presumptions which operate when the cheque is dishonoured. The observations in paragraphs 14 and 14 are material and, hence, extracted below :

“14] When a summary suit instituted is based on a cheque which is dishonoured, effect of [Sections 138](#) and [139](#) of Negotiable Instruments Act raising statutory presumption that the cheque was issued in discharge of a liability, is a relevant consideration to be kept in mind. The said Sections cast a burden upon the defendant to rebut the presumption. Summary suits instituted on cheques which are dishonoured will, therefore, stand on a higher footing than summary suits instituted on the basis of other documents. In such cases, the Court will have to take into consideration the statutory presumption which is raised when the cheques are dishonoured. The object behind providing a statutory presumption under the [Negotiable Instruments Act](#) has to be kept in mind while judging the credibility of a defence raised by the defendant in summary suit. Thus, the test of more than "shadowy" and less than "probable" as adverted to by the Apex Court cannot apply in cases where the law requires a person to explain certain state of affairs. The judgments which are relied upon by the learned counsel do not consider the effect of the statutory presumptions raised under the [Negotiable Instruments Act](#) when a cheque is dishonoured. In our opinion, when a cheque is dishonoured, the Court is enjoined with the duty to scrutinize the defence put up by the defendant with a much higher degree of care and circumspection. Such summary suits cannot be treated as on par with the cases

instituted on contracts or invoices etc. where such statutory presumptions do not operate.

15] The legislative intent behind enactment of [Sections 138](#) and [139](#) of the Negotiable Instruments Act is to prevent abuse of the banking system. Thus, one who issues a cheque extends a solemn promise to pay. Based on this promise and action, the recipients arrange their affairs and quite often enter into further transactions. Unless extraordinary circumstances are made out, one who issues cheque is deemed to have undertaken to pay. [Negotiable Instruments Act](#) enforces the promise strictly by raising statutory presumption and treating it as an offence. This provision elevates a cheque to a higher status than the other instruments, such as written contract etc. to which no such statutory presumption is attached. What needs to be emphasized is that presumption in respect of a dishonoured cheque places a higher burden on the defendant to elucidate the defence than the burden which is cast on a defendant where the suit is filed on the basis of ordinary instruments. In the cases based on dishonour of cheques, the defendant must satisfy the conscience of the Court and cannot take shelter behind the rules formulated primarily in respect of suits based on ordinary instruments. The Court while exercising the discretion to grant leave or otherwise to the defendant in such cases cannot be oblivious of the legislative intent to place the promise made through a cheque on a higher pedestal than the promise made through an ordinary instrument. This is not to state that moment a Summary Suit is lodged based on a

dishonoured cheque, it must be decreed without anything more. What needs to be emphasised is that the fact that there is a statutory presumption attached to the dishonoured cheque will constitute an important ingredient while considering the question whether leave to defend should be granted in cases of dishonoured cheques and the Court must scrutinise the defence strictly. The object of the summary procedure is ultimately to see that the defendant does not needlessly prolong the litigation by creating untenable, frivolous and casual defences so as to deprive the plaintiff of the monies due to him.

(emphasis supplied)

**24.** Keeping in view the aforesaid position in law, the quality of defence sought to be raised on behalf of Defendant Nos.1 and 3 deserves to be appreciated. Is the defence such that it satisfies the conscious of the Court that the defence so taken raises a triable issue and has the potential to dislodge the statutory presumptions ?

**25.** As noted above, Defendant Nos.1 and 3 seek to draw support from the entries in the extracts of the account of Defendant No.3 and Defendant No.1 – Garment, to bolster up a case that the money was merely routed through these accounts. The extract of account of Defendant No.1 Garment (Exhibit 2) to the Affidavit in Reply, indicates that a sum of Rs.45 Lakhs was remitted to the account of Garment – Defendant No.1 from the Plaintiff No.2 and two other entities namely Dharma Enterprises and Vedant Agarwal on 11 June, 2015. On the very day, the said amount came to be transferred to the account of

Defendant No.3 – Hemant. Later on, the very same amount was repaid to Plaintiff No.2 on 22 July 2015 and Vedant and Dharma on 22 June, 2015.

**26.** The same course, according to Defendant Nos.1 and 3, was adopted in respect of the transactions in question. The extract of account (Exhibit B) of Garment indicates that a sum of Rs.1 Crore was credited to the account of the Defendant No.1 by Plaintiff No.1 on 6 January 2016. On the very day, the said amount of Rs.1 Crore was transferred to the account of Hemant, Defendant No.3. Instantaneously, the said amount came to be transferred to the account of Tejora – Defendant No.2. Thereafter, another sum of Rs.50 Lakhs was credited by Plaintiff No.1 to the account of Defendant No.1 on 24 June, 2016. Instantaneously, the said amount came to be transferred to the account of Hemant – Defendant No.3. Hemant, in turn, transferred the said amount of Rs.1 Crore to Tejora – Defendant No.2 on the very day.

**27.** In this fashion, an amount of Rs.1,50,00,000/- came to be transferred to the account of Tejora – Defendant No.2. Had this been the only material, it could have been urged that the transfer of the amount by Defendant Nos.1 and 3 to the account of Tejora was an inter se affair between the Defendants and that would not affect the enforceability of the debt. However, the attendant circumstances, cannot be lost sight of.

**28.** First and foremost, the instantaneous transfer of the amount received from the Plaintiffs to the account of Tejora in respect of both the tranches of advances (Rs.1 Crore & Rs. 50 Lakhs) cannot be wished away as a matter of

mere co-incidence. This *modus operandi* lends prima facie credence to the defence. Secondly, the transcript of conversation (Exhibit 11 to the Affidavit in Reply) between the daughter of the Plaintiff and the Defendant No.3, throws light on the nature of the relationship amongst the character involved in the matter.

**29.** Undoubtedly, the conversation is interspersed with the personal and emotive details. Nonetheless, without touching upon those parts, a legitimate inference about the nature of the transaction and the relationship between the parties can be drawn. Repeated assertions and imploration of Hemant – Defendant No.3 that the daughter of the Plaintiff was fully aware of the real nature of the transaction and he was not at all liable to repay the amount and was being made a scapegoat, deserves to be taken note of. It is also pertinent to note that this stand of the Defendant No.3 does not seem to have been controverted in unequivocal terms. In contrast, Defendant No.3 was called upon to reason with the wife of Nitin Shenoy to refund the amount. Lastly, if the conversation is considered in its entirety, the submission of Mr. Kantawalla that the Plaintiff No.2 was not at all involved does not advance the cause of the Plaintiffs as it indicates that the Defendant No.3 was insisting to have a meeting with the Plaintiff No.2 and disclose the true state of affairs. This gives heft to the submission on behalf of Defendant Nos.1 and 3 that there was no inter - partes transaction between Plaintiff No.2 and Defendant No.3. It is of

relevance to note that it is the Plaintiff's case that Defendant No.3 forged friendly relations with Plaintiff No.2 through his daughter.

**30.** Mr. Cama endeavoured to impress upon the Court that the fact that the account was closed in the year 2017 itself, and subject cheque came to be presented for encashment in the year 2019, dents the Plaintiffs' claim. In my view, the said factor itself may not be of decisive significance. However, in the totality of the circumstances, the said aspect may also deserve consideration.

**31.** The conspectus of aforesaid consideration is that Defendant Nos.1 and 3 have succeeded in bringing material on record to show that they have a reasonable and fair defence. The material placed on record appears to be of such a quality as to bear weight of dispelling presumptions, if the matter goes for trial. I am, therefore, persuaded to hold that the Defendants deserve an unconditional leave to defend the Suit.

**32.** Hence, the following order :

#### ORDER

- (i) The Defendants are granted unconditional leave to defend the Suit.
- (ii) The Defendants shall file Written Statement within a period of 30 days from today.
- (iii) The Summons for Judgment stands dismissed.
- (iv) In view of the dismissal of the Summons for Judgment, Interim Application (L) No.26655 of 2022, also stands disposed.

**[N. J. JAMADAR, J.]**