IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.13 OF 2023
IN
SUMMARY SUITS NO.7 OF 2023

Shahrukh Adil Khan and Anr. … Plaintiffs
V/s.
Skylink Hospitality LLP and Ors. … Defendants.

Mr.Pramod Bhosale with Mr. Praful Valvi, Mr. Mangesh Padvi i/b Ms. Devika Nigade, Advocates for the Plaintiffs.

Ms.Hrushi Narvekar with Ms. Sakshi Sabooo i/b DSK Legal, Advocates for the Defendants No.1 & 5.

CORAM : ABHAY AHUJA, J.

RESERVED ON : 26th OCTOBER, 2023
PRONOUNCED ON : 5th DECEMBER, 2023

ORDER :

1. This suit has been filed by the Plaintiffs as a Summary Suit for recovery of an amount of Rs. 1,64,09,392/- along with interest at the rate of 12% p.a. from the date of the suit till payment and/or realization and costs of the suit.

2. The Plaintiffs' case in the plaint is as under :

(a) The Plaintiffs are senior citizens who had paid monies to the Defendants for a house in Mumbai to be used for residence purposes after retirement and paid an amount of Rs.83,84,543/- to the Defendants pursuant to a booking form and an allotment letter for a flat on the 11th floor of a project by the name of Mirabilis Plug and Play Homes jointly developed by Defendants no.1, 4 and 5. The Plaintiffs were shown a proposed plan of a proposed flat on the 11th floor having a carpet area of 97.17 square meters equivalent to 1046 square feet in the "B" Wing of the building known as Mirabilis proposed to comprise two wings with common podium on a portion of land bearing Survey No.368, Hissa No.42(Part) of Village Kolekalyan, Santacruz (East), Mumbai–400055 and the total consideration would be Rs.4,14,21,600/-. As per the allotment letter, the possession of the flat was to be given earliest by 30th June 2019 and latest by 31st December 2019. It is the case of the Plaintiffs that they were promised that the agreement would be executed in due course, however, on one pretext or the other, the Defendants kept on delaying the execution and registration of the agreement, despite repeated assurances from time to time.

(b) On 29th July 2017, an email was received from the Defendants that on account of certain external factors beyond their control, there was a delay in completion of the project which would be concluded by 31st December 2020 and the monetary loss faced by the Plaintiffs would be compensated at the rate of 8.5% per annum.

(c) On 14th August 2017, the Plaintiffs sent an email as to the calculation of cut off compensation as well as regarding the intermediate milestones for completion and hand over of the flat on 31st December 2020. The said email was replied to by the Defendants and the cut off date was stated as July 2017 and that the compensation amount would be adjusted against the next demand. Thereafter, on 16th March 2018 the office of the Defendants informed the Plaintiffs by email that there was a delay in starting the project as the same was Slum Rehabilitation Area (SRA) Project and that for the security of Plaintiffs' monies, the Defendants would initiate the refund process of stamp duty and registration amount that was paid to the government. On 29th March 2018 the Defendants' office sent a refund form for stamp duty registration which was given by the Plaintiffs.

(d) On 20th August 2018 the Plaintiffs enquired about the status of the refund and also requested for information about the status of construction on site which was replied with the information that the Plaintiffs had to visit the Registration office and that the excavation had started. Thereafter, the Plaintiffs were informed that sudden changes were made in the plans and there was a delay in the project. The Plaintiffs sent an email dated 20th August 2018 requesting a detailed report on the changes made to the original building plans for both Mirabilis and SRA and also if the Defendants had permission for 10 floors or 14 floors. Although the Plaintiffs were informed that the plans and details would be shared in seven to ten days, no such information was furnished to the Plaintiffs. Thereafter, on 30th November 2018, the Plaintiffs sent another email stating that they did not want to continue with the project and wanted to withdraw from the project with immediate effect and requested the Defendants to commence the procedure of return of the principal amount with interest.

(e) On 1st December 2018 the Defendants' office sent an email forwarding a cancellation letter to be filled. Be email dated 3rd

December 2018, the Plaintiffs informed that the cancellation form did not cover refund of interest amount and to confirm that the same would be refund as well.

(f) The Plaintiffs submit that after continuous follow up for updates from the Defendants' office on several occasions, the Defendants sent an email dated 17th January 2019 to the Plaintiffs stating that they will pay interest at the rate of 8.5% from receipt of payment till payment is made. The Defendants also requested to grant time till March to give refund to the Plaintiffs. The Plaintiffs submit that the Defendants thus admitted their liability to pay the amounts along with interest.

(g) By an email dated 18th January 2019, the Plaintiffs granted time till 10th March 2019 for refund of the amounts to which there was a prompt reply that the Defendants would update as soon as the refund amount was ready. However, there was no update on the refund amounts. That, thereafter, the Plaintiffs sent emails on 4th March 2019, 27th March 2019 requesting the Defendants to update the status of refund. Thereafter, the Defendants sent an email on 28th

March 2019 stating that the payment would be made by May 2019 and the Defendants would pay interest at 9% per annum. By an email dated 22nd May 2019, the Defendants once again informed the Plaintiffs that payment of refund was still under process and the same would be refunded only in July 2019 along with interest at the rate of 9% as confirmed earlier. According to the Plaintiffs, this was yet another admission of liability on behalf of the Defendants.

(h) That thereafter, since no amounts were refunded by the Defendants, the Plaintiffs sent emails dated 15th August 2019 and 6th September 2019 reminding the Defendants that over a year had passed without any payment and the Plaintiffs had been patiently waiting for the refund.

(i) On 14th September 2019, the Defendants raised certain excuses for non-payment of amounts and requested further ninety days to make the payment. Plaintiffs sent emails dated 13th October 2019 and 27th November 2019 reminding the Defendants to make payment at the end of ninety days viz. by December 2019.

(j) By an email dated 28th November 2019, the Defendants informed that they were working towards the repayment schedule. It is the case of the Plaintiffs that despite of giving sufficient time to the Defendants to refund the amounts, the Defendants failed to refund the monies to the Plaintiffs and instead of making payment addressed an email dated 18th December 2019 seeking extension of time by stating that they were unable to make the payment of amount as per the schedule mentioned therein and the entire amount would be paid by 30th April 2020. By an email dated 31st January 2020, the Defendants requested further extension to make payment as per the schedule stating that the entire amount would be paid by 25th June 2020. The Defendants had also annexed post dated cheques but the Plaintiffs have not yet received any cheques which was communicated to the Defendants by an email dated 11th March 2020.

(k) It is submitted that, in the meantime, the Plaintiffs kept on co-operating with the Defendants and requesting for refund of the monies. By an email dated 21st November 2020, the Defendants' office attached worksheet for refund with interest. However, no payment was received.

(l) Thereafter, the Plaintiffs, through one of their common friend Mr.Jimmy, contacted the Defendant no.3, being the Chairman and majority shareholder of the Defendant no.4, who assured that he will take care of the issue of the Plaintiffs and also replied to Jimmy that he is sorting out the issue. It is submitted that based on the said assurance, Plaintiffs did not take any legal steps for recovery of the said amounts.

(m) By an email dated 26th March 2021, the Defendants once again sought time to make the payment and that they would be able to start repayment in installments only from 27th April of the next financial year. It is submitted that, thereafter, the Plaintiffs patiently waited till 27th April 2021 for their first installment, however, no monies were paid. The Plaintiffs also sent an email dated 7th May 2021 enquiring about the status of the cheques as all the earlier cheques were withdrawn by the Defendants. It is submitted on behalf of the Plaintiffs that after numerous efforts on several occasions, the Plaintiffs were handed over cheques of the amounts, however said cheques bounced with the remark that the payment was stopped by the drawer. The Plaintiffs' case is that the

Defendants have cheated the Plaintiffs and harassed the Plaintiffs which is causing tremendous mental stress to the Plaintiffs. The Plaintiffs also submit that they have undergone tremendous stress and pressure due to the action of the bouncing of the cheques.

(n) It is submitted that, thereafter, the Plaintiffs issued a notice dated 19th January 2023 jointly calling upon the Defendants to refund the monies of the Plaintiffs.

(o) It is submitted that, based on the assurances and statements made by the Defendants, the Plaintiffs, at the relevant time, did not initiate any legal proceedings against the Defendants. That, the Defendants also met the Plaintiffs personally on several occasions and requested for further time. That, despite passage of substantial time, the Defendants did not pay the entire amount. It is submitted that the Defendants through several emails have admitted that the amounts were received by them and that they would return the monies, thereby admitting the liability.

(p) That, since despite several notices, the Defendants failed to make payment of the outstanding dues to the Plaintiffs, being convinced that the Defendants were not ready and willing to fulfill their promises, after the Plaintiffs having called upon the Defendants to jointly and severally pay the sum of Rs.83,84,543/- plus interest of Rs.50,24,849/- at the rate of 9% per annum from the date of payment till 21st March 2023, the Plaintiffs were constrained to file this suit as a summary suit on the basis of acknowledgment of liability by the Defendants for Rs.1,34,09,392/- and the compensation for the mental stress and agony including the health issues calculated at Rs.30,00,000/- by the Plaintiffs, totalling to Rs.1,64,09,392/- along with further interest at the rate of 12% per annum from the date of filing of the suit till realization, as per the particulars of the claim at Exhibit MM.

3. The Defendants No.1 and 5 have entered appearance, whereafter a Summons for Judgment was taken out by the Plaintiffs. To the Summons for Judgment, Defendants No.1 and 5 have filed a reply raising preliminary objection as to the maintainability of the suit and also that this Court lacks jurisdiction to entertain the suit and grant the reliefs contained therein.

4. It is submitted that the Plaintiffs have failed to make a specific averment in the Plaint stating that the same has been filed under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) despite that being a mandatory requirement under Order XXXVII Rule 2(a) of the CPC and has also failed to make a specific averment that no relief which does not fall within the ambit of Order XXXVII of the CPC has been claimed in accordance with Order XXXVII Rule 2(b). That, to the contrary, the Plaintiffs have claimed compensation of Rs.30,00,000/- on account of “mental stress and agone including health issues” which is entirely outside the object and scope of Order XXXVII of the CPC. Since the provisions of Order XXXVII of the CPC are mandatory in nature and not merely directory, the non-compliance of Order XXXVII Rules 1 and 2 would result in the suit falling outside the ambit of Order XXXVII of the CPC, as a consequence of which the Summons for Judgment would not be maintainable.

5. It is further submitted that this Court does not have jurisdiction to entertain the present suit as the same is barred by Section 79 of the Real Estate (Regulation and Development) Act, 2016 (the “RERA Act”).

6. In the case at hand, it is observed that issue of jurisdiction has been raised by the Defendants. Section 79 bars the jurisdiction of a Civil Court to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under the Act. The issue of jurisdiction itself becomes the triable issue.

7. Mr. Hrushi Narvekar, learned Counsel for the Defendants no.1 and 5 submits that the suit being barred under Section 79 of the RERA Act, the Plaint be rejected under Order 7 Rule 11 (d) of the CPC as being barred by law, although no separate Application has been preferred on behalf of the said Defendants.

8. It is submitted that the Plaintiffs are allottees under Section 2(d) of the RERA Act and the project in which the flat has been allotted is covered within the ambit of Section 2(zj) and 2(zn) of the RERA Act and therefore the grievances for refund of the amount paid towards the allotment would lie before the Maharashtra Real Estate Regulatory Authority (the "MahaRERA") and not a Civil Court.

9. Learned counsel would submit that therefore any grievance for refund of amount paid towards the allotment would lie before the Maha RERA Tribunal and not a Civil Court. Learned Counsel submits that Section 79 of the RERA Act provides for a specific bar on the jurisdiction of Civil Courts to entertain any suit or proceeding in respect of which the authority is empowered by or under RERA Act to determine. The Plaintiffs are allottees under the RERA Act and hence barred from invoking jurisdiction of a Civil Court. The Project as mentioned above is registered with MAHARERA and there is special mechanism under the RERA Act for redressal of grievances. Therefore, the Plaintiffs are barred from approaching this Court seeking reliefs. That only the authority or adjudicating officer under the RERA Act has jurisdiction to entertain and adjudicate. Learned Counsel refers to Order VII Rule 11 (d) of the CPC and submits that since the Suit is barred under Section 79 of the RERA Act, the Plaint deserves to be rejected under the said provisions of the CPC. Learned Counsel has sought to take this Court through the various provisions of the RERA Act including following Sections, in support of his contentions:-

> *"2(c) "agreement for sale" means an agreement entered into between the promoter and the allottee;*

2(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or buildings, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

2(k) "carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment;

2(n) "common areas" mean-
(i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase the entire land for that phase;
(ii) the staircases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exists of buildings;
(iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;
(iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;
(v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;
(vi) the water tanks, sumps, motors, fans compressors, ducts and all apparatus connected with installations for common use;
(vii) all community and commercial facilities as provided in the real estate projects;
(viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;

18. Return of amount and compensation
(1) If the promoter fails to complete or is unable to give

possession an apartment, plot or building, -

> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
>
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

31. Filing of complaints with the Authority or the adjudicating officer

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or

the Rules and Regulations made thereunder against any promoter allottee or real estate agent as the case may be.

Explanation.- For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be [substituted for the words "specified by regulations" by the Real Estate (Regulation and Development) Removal of Difficulty Order 2016(w.e.f. 28.10.2016)]

79. Bar of jurisdiction

No civil court shall have jurisdiction to to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act, to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

10. Learned Counsel submits that once there is a relationship of allottee and promoter, the proper course of action would be to take recourse under Section 18 and 31 of the RERA Act for return of the amounts paid to the promoter. Learned Counsel would submit that the entire machinery under the RERA Act is to facilitate resolution of the disputes such as the one between the Plaintiffs and the Defendants herein. Learned Counsel submits that the orders passed by the authorities are appealable before the Appellate Tribunal under the RERA Act and the orders passed by the

Appellate Tribunal are executable as a decree and are also appealable to the High Court as a second appeal on grounds specified in Section 100 of the CPC. Learned Counsel also submits that the claim for compensation of Rs.30,00,000/- claimed by the Plaintiffs on account of mental stress and agony including health issues can be adjudicated under Section 71 of the RERA Act, which empowers the authority to adjudge compensation and certainly not as a claim on a summary suit. Learned Counsel would submit that the adjudicating officer has also to take care of the various factors as specified in Section 72 of the RERA Act, while adjudging the quantum of compensation or interest. Learned Counsel submits that therefore the RERA Act is a complete Code to adjudicate the amounts claimed by the Plaintiffs in this suit having a complete machinery from the authority to appeal before the Appellate Tribunal as well as this Court and therefore, the bar of the jurisdiction of a Civil Court under Section 79 to entertain any suit or proceeding in respect of any matter which the authority or the adjudicating officer or the Appellate Tribunal is clearly justified. Learned Counsel therefore submits that this suit be dismissed on this ground alone.

11. Mr.Narvekar has relied upon the following two decisions in support of his contentions, that when there is an express bar on the jurisdiction of

this Court, then this Court cannot entertain or try the claim of the Plaintiffs:-

1. ***Joydeep Roy and Another Vs. Srijan Residency LLP and Ors***[1]
2. ***Dhulabhai ETC Vs. State of Madhya Pradesh and Anr***[2]

12. Learned Counsel for the Defendants no.1 and 5 further submits that the allotment letter is an agreement for sale as defined under Section 2 (c) of the RERA Act. Learned Counsel seeks to rely upon a Judgment of the Maharashtra Real Estate Appellate Tribunal, Mumbai in the case of ***Mrs.Jyoti K. Narang & Anr. vs. CCI Projects Pvt. Ltd.***[3] to submit that a document of which is styled as an allotment letter is an agreement for sale and purchase between the parties and intention of the parties is to be gathered from the terms and conditions of the transactions incorporated in the document of the transaction which is important and substantial to decide the nature of the transaction and not the title of the document of the transaction.

13. On the other hand, Mr.Pramod Bhosale, learned Counsel for the Plaintiffs would submit that the letter of allotment dated 6th June, 2016

1 2023 SCC OnLine Cal 3408
2 1968 SCC OnLine SC 40
3 Appeal No.AT006000000010841 in Complaint No.CC006000000055491 dated 24.11.2020

has been cancelled and therefore, there is no relationship between the Plaintiffs and the Defendants as allottee and promotor. Learned Counsel draws the attention of this Court to the communications between the Plaintiffs and the Defendants at pages 91 (Exhibit-M) and 93 (Exhibit-N) as well as page 76 (Exhibit-G), page 107 (Exhibit-U) and page 109 (Exhibit-V) to submit that the Plaintiffs had due to the long delay and uncertainty of delivery of possession of the subject flat, withdrawn from the project and requested for return of the principal amount along with the interest, which request was acceded to by the Defendants by furnishing a cancellation request form which was filled up and sent to the Defendants, after which the Defendants have acknowledged the receipt of the same and also admitted that the refund was under process and would be paid by July, 2019 along with interest.

14. Learned Counsel further submits that in pursuance of aforesaid, the Defendants have also issued cheques to the Plaintiffs, which have been dishonoured. That thereafter being left with no option, the Plaintiffs had issued a legal notice to the Defendants for recovery of the amounts but since despite the same, the payments were not made, the Plaintiffs were constrained to file the subject summary suit.

15. Learned Counsel would submit that the present suit is based on a clear admission of liability of the Defendants to pay the amounts to the Plaintiffs along with interest. The said summary suit is not filed by the Plaintiffs in their capacity as allottee of the subject flat as the said allotment had already been cancelled and the suit has been filed thereafter. Learned Counsel refers to the paragraph 5 of the rejoinder and submits that the Defendants have not only admitted the contents of the summary suit but also issued cheques which were dishonoured as "payment was stopped by the drawer".

16. Without prejudice to above, Mr.Pramod Bhosale, for the Plaintiffs would submit, drawing the attention of this Court to Section 18 of the RERA Act, that in case an allottee wishes to withdraw from the project, the allottee has an option to either go under the RERA Act or to avail of any other remedy for return of the amount, which option the Plaintiffs have exercised by filing the present summary suit. Learned Counsel would also submit without prejudice to above contentions that with respect to the claims of the Plaintiffs regarding compensation for mental stress and agony including health issues, Plaintiffs are willing to drop the same to maintain the same as a summary suit.

17. Mr.Pramod Bhosale, learned Counsel for the Plaintiffs relies upon the decision of the Division Bench of this Court in the case of ***Rajesh Laxmichand Udeshi @ Bhatia Vs. Pravin Hiralal Shah***[4] to submit that the suit as filed can be maintained as a summary suit. The learned Counsel relies upon the paragraph 8 of the said decision in support, however, submitting that he is willing to forego the claim of compensation with respect to the agony suffered by the Plaintiffs.

18. I have heard Mr.Bhosale, learned Counsel for the Plaintiffs and Mr.Narvekar, learned Counsel for the Defendants no.1 and 5 and with their able assistance considered the rival contentions.

19. The Plaintiffs have made a claim of Rs.1,64,09,392/- which includes the amount of Rs.83,84,543/- which the Plaintiffs had paid to the Defendants plus Rs.50,24,849/- being the interest at the rate of 9% per annum as purportedly admitted by the Defendants, in addition Rs.30,00,000/- as compensation for mental stress and agony including health issues. The Plaintiffs had withdrawn from the project and requested

4 2014(1) ALL MR 784

for return of the principal amount along with interest. According to the Plaintiffs, on 30th November 2018, they cancelled the booking and asked for refund. The Defendants furnished a cancellation request form which was filled up and sent to the Defendants. The Defendants acknowledged the receipt of the same and also agreed to refund. On behalf of the Plaintiffs, it is claimed that there is no relationship between the Plaintiffs and the Defendants as allottee and promoter and therefore the provisions of the RERA Act would not apply. The Plaintiffs have also claimed that cheques that were issued by the Defendants to the Plaintiffs have been dishonoured as the payment was stopped by the drawer and therefore also the suit is not filed by the Plaintiffs in their capacity as allottees of the subject flat and therefore also, the provisions of the RERA Act would not apply. That, as per Section 18 of the RERA Act, if the allottee wishes to withdraw from the project, the allottee has an option to either go under the RERA Act or to avail of any other remedy for refund of the amount, which option the Plaintiffs claim to have exercised by filing the present summary suit.

20. On behalf of the Defendants, it has been firstly submitted that the Plaintiffs have failed to make a specific averment in the Plaint stating that the same has been filed under Order XXXVII of the CPC despite that being a mandatory requirement under Order XXXVII Rule 2(a) of the CPC and have also failed to make a specific averment that no relief which does not fall within the ambit of Order XXXVII of the CPC has been claimed in accordance with Order XXXVII Rule 2(b). That, the Plaintiffs have claimed compensation of Rs.30,00,000/- on account of “mental stress and agony including health issues” which is outside the object and scope of Order XXXVII of the CPC. Therefore, the suit would not be maintainable as a summary suit. It has also been argued that the said claim could be adjudicated under Section 71 of the RERA Act, although on behalf of the Plaintiffs it is submitted that the Plaintiffs are willing to drop the claim with respect to the said compensation. Further, it has been laboriously argued that pursuant to Section 79 of the RERA Act, this Court has no jurisdiction as jurisdiction of Civil Courts is barred as the dispute is with respect to the relationship of the Plaintiffs and the Defendants as allottee and promoter for which the RERA Act is a complete Code, as has been submitted on behalf of the Defendants by referring to various provisions of

the RERA Act and that therefore, this Court reject the plaint under Order VII Rule 11(d) of the CPC although admittedly no application has been made in this behalf. The issue whether Section 18 of the RERA Act grants an option to the allottee to prosecute remedies otherwise than provided in the Act by way of a suit would also require consideration. Both the learned Counsel have relied upon various judgments in support of their contentions.

21. In my view, the Defendants have raised triable issues which cannot be decided in a summary manner but determined by the Court at the trial. The above contentious issues including the one of jurisdiction would require adjudication after considering the defence of the appearing Defendants in a written statement filed by them.

22. In paragraph 33 of the judgment in the case of ***B.L.Kashyap and Sons Ltd. vs. M/s.JMS Steels and Power Corporation and Anr.***[5], the Hon'ble Supreme Court has observed that grant of leave to defend with or without conditions is the ordinary rule and denial of leave to defend is an exception. The defendant is ordinarily entitled to leave to defend unless

5 (2022) 3 SCC 294

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 could be imposed while granting leave but denying the leave would be ordinarily countenanced only in such cases where there is no triable issue or the Court finds the defence to be frivolous or vexatious, which does not appear to be the case at hand.

23. In view of the above discussion, I am inclined to grant conditional leave to Defendants no.1 and 5. Accordingly, the following order is passed:

ORDER

(i) Leave to defend the present suit is granted to the Defendants no.1 and 5 subject to their depositing a sum of Rs.1,34,09,392/- within a period of four weeks from the date of uploading 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 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 aforesaid period, the Plaintiffs shall be entitled to apply for an *ex-parte* decree against the Defendants no.1 and 5 after obtaining a Non-deposit Certificate from the Prothonotary and Senior Master of this Court.

(iv) Summons for Judgment stands disposed in the aforesaid terms.

(ABHAY AHUJA, J.)

ARTI VILAS KHATATE

Digitally signed by ARTI VILAS KHATATE Date: 2023.12.12 21:30:04 +0530