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A.No.2416 of 2022

A.No.2416 of 2022
and
O.A.No.209 of 2022
in
C.S.(Comm.Div.)No.3 of 2022

C.SARAVANAN, J.

This application has been filed to permit the applicants/defendants to leave to defend the suit at the cost of the respondents/plaintiffs.

2. The above suit has been filed by the respondents/plaintiffs for a summary disposal of the suit in terms of Order XXXVII Rule 1 of C.P.C for the following relief:

(i) Directing the defendants to jointly and severally pay a sum of Rs.2,02,71,568/- (Rupees Two Crores Two Lakhs Seventy One Thousand Five Hundred Sixty Eight only) together with interest at 18% per annum from the date of plaint till the date of realization.

(ii) To pay the costs of the suit.



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3. The case of the respondents/plaintiffs is predicated on the strength of the three agreements signed by the applicants/defendants for a sum of Rs.1,83,00,000/- is detailed below:-

Sl.No.	Date	Agreement Bond No.	Amount Invested
1.	22.04.2021	821/2021	40,00,000
2.	28.04.2021	703/2021	13,00,000
3.	03.06.2021	702/2021	1,30,00,000
	Total		1,83,00,000

4. It is the case of the respondents/plaintiffs that the amount was also secured by the respondents/plaintiffs, the cheques which were not honoured.

5. In Paragraph No.33 of the affidavit filed in support of the application in A.No.2416 of 2022, the applicants/defendants has stated that the respondents/plaintiffs suppressed several material facts and has created fabricated and forged documents. Hence, the Court be pleased to conduct a fair trial in the matter rather than deciding the suit in a summary manner. It is further submitted that the respondents/plaintiffs have also not complied



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with the mandate requirements of Order XXXVII Rule 1 of C.P.C and Order VII Rule 1 of the Original Side Rules, 1994 after filing the suit under the Chapter since the respondents/plaintiffs have not filed a petition under Order XXXVII (3)(4)(5) of C.P.C.

6. A reading of the affidavit filed by the applicants/defendants for leave to defend the suit indicates that barring contradictions, there is no material for the Court to come to a conclusion that there are triable issues for a case to be referred for regular trial. The law mandates a applicant/defendant seeking leave to defend the suit to satisfy the test laid down by the Hon'ble Supreme Court in **IDBI Trusteeship Services Limited Vs Hubtown Limited**, (2017) 1 SCC 568.

7. Paragraph 17 from the said decision is extracted as under:-

"17.Accordingly, the principles stated in para 8 of Mechelec case will now stand superseded, given the amendment of Order XXXVII Rule 3 and the binding decision of four Judges in Milkhiram case, as follows:

17.1

17.2



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17.3

17.4

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."

8. The applicants/defendants have not denied that the respondents/plaintiffs had borrowed money from them. Barring a bald denial in the affidavit filed in support of the application for leave to defend the suit, there is no other material available for the Court to come to a conclusion that the applicants/defendants had made out a case for grant of leave.



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9. Under these circumstances, I am inclined to dismiss this application. Accordingly, this application is dismissed.

10. Registry is directed to list this case before the learned Master for marking documents on 23.01.2023 and thereafter list this case before this Court for decreeing the suit.

04.01.2023

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