



2024:DHC:1143



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

% **Pronounced on: 15th February, 2024**

+ **C.R.P. 91/2022 & CM APPL. 29968/2022**

APARNA CHOUDHRIE KALA

..... Petitioner

Through: **M. Ashish Dholakia, Mr. Rohan Chawla and Mr. Harshit Joshi,**
Advocates

versus

VAIBHAV KALA

..... Respondent

Through: **Mr. Manish Sharma and Mr. Vijay Kaundal and Ms. Nandini Aishwarya,**
Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant civil revision petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter "CPC") has been filed on behalf of the petitioner seeking the following reliefs:

"1. Allow the present petition and set aside the order dated 22.04.2022 passed in in CS No. 352/2020 titled 'Aparna Choudhrie Kala v. Vaibhav Kala' by the Additional District Judge- 04, South East, Saket Courts, New Delhi;

2. Issue a decree in favour of the Petitioner and against the Respondent directing the Respondent to pay the Petitioner an amount of Rs 70,32,959/-;



3. Award interest at the rate of 18% per annum to the Petitioner on the amount of Rs 70,32,959/- from 31.07.2020 till the date of repayment;
4. Award costs of the suit in favour of the Petitioner and against the Respondent;
- Pass any other order(s)/direction(s) as this Hon'ble Court may deem fit in the interests of justice and equity.”

FACTUAL HISTORY

2. The petitioner, who is a resident of Delhi, is a director and a shareholder of a company namely M/s Aqua Terra Adventures India Pvt. Ltd. (hereinafter “ATAIPL”). The respondent, who is the husband of petitioner is also a director and shareholder of ATAIPL.
3. As stated, during the years 2012 to 2015, the petitioner had advanced a loan of approximately amounting to Rs. 1.45 Crore to ATAIPL. Thereafter, during the years 2018-19 and 2019-20, a sum of Rs. 55 Lakhs was transferred by ATAIPL in to the joint bank account of the parties where the respondent is the primary holder of the said joint bank account. The petitioner alleges that the respondent, without the consent of the petitioner, unilaterally and unauthorizedly transferred the said amount of Rs. 55 Lakhs from the joint bank account for his own personal use in order to fulfil his liabilities towards third parties.
4. Subsequently, upon an enquiry by the petitioner, it was informed by the respondent via WhatsApp messages including the messages of 9th July, 2018 that the respondent needed the monies for his personal liabilities. It is



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also stated that the respondent did not inform that the monies transferred from ATAIPL to the joint account were towards repayment of the loan given by the petitioner to ATAIPL.

5. Thereafter, in the month of August, 2019, the petitioner questioned the movement of the monies, in and out of the joint account, without her consent and knowledge. Moreover, the petitioner categorically instructed the respondent to not make any more payments into the joint bank account.

6. In October 2019, the draft balance sheet of ATAIPL for the financial year 2018 - 2019 was shared with the petitioner and it has been stated that she was shocked to see that as per the contents mentioned therein, a sum of Rs 35 Lakhs of her loan to the company had been supposedly repaid to her during the year. Vide her email dated 23rd October, 2019, the petitioner requested that the balance sheet be corrected to this effect. The respondent did not change the entry and the petitioner refused to sign the balance sheet, as she had never received the repayment of her loan.

7. Further, when it was revealed to the petitioner that the monies were actually transferred towards repayment of the loan given by the petitioner to ATAIPL, the respondent assured her that he would repay the amount of Rs. 55 lakhs within a short period of time, but to no avail.

8. Thereafter, vide email dated 28th October, 2019, the respondent acknowledged in writing that he owed a sum of Rs. 55 Lakhs to the petitioner and undertook to repay the same by 30th November, 2019.

9. Upon failure to repay the said amount of money to the petitioner and after repeated requests, the petitioner, i.e., the plaintiffs before the learned



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Court below filed a suit against the respondent, i.e., the defendant under Order XXXVII of the CPC for recovery of money before the learned Trial Court, which was registered as CS No. 352/2020, and the same is pending for adjudication.

10. It is also stated that a petition for divorce on the grounds of cruelty and desertion under Section 13 (1) (ia) and (ib) of the Hindu Marriage Act, 1955 is pending before the Family Court, Patiala House Court, New Delhi. Further, a complaint filed under Section 12 of the Protection of Women for Domestic Violence Act, 2005 is pending before the Saket Court and a petition of oppression of mismanagement under Section 241-242 of the Companies Act, 2013 is also pending for adjudication before the National Company Law Tribunal, New Delhi.

11. In the said suit summons were served to the respondent/defendant who had filed an application under Order XXXVII Rule 3 (5) of the CPC seeking leave to defend. The learned Trial Court allowed the respondent's application seeking leave to defend vide the impugned order dated 22nd April, 2022. Being aggrieved by the same, the petitioner has approached this Court under its revisional jurisdiction.

PLEADINGS

12. The petitioner had filed the instant civil revision petition on 4th July, 2022 and has submitted the below stated arguments:



“..A. BECAUSE the Ld. Trial Court has committed a material irregularity by holding that there are triable issues, and that the Respondent has a fair and/or reasonable defence.

B. BECAUSE the Ld. Trial Court has not indicated any triable issue that arises in the facts of the instant case.

C. BECAUSE the Ld. Trial Court conclusion that a triable issue arose on the reading of the emails exchanged between the parties suffers from material irregularity, as neither party had contended that the contents of the emails were in any way ambiguous requiring extrinsic evidence.

D. BECAUSE the emails exchanged between the parties are clear and categorical. The emails are also admitted by the parties. Hence, oral evidence concerning them is barred under the Indian Evidence Act, 1872. Thus, the Ld. Trial Court's finding is contrary to law.

E. BECAUSE the Ld. Trial Court did not appreciate the fact that the Petitioner signed the balance sheet of 2018-19 of ATAPL only after she had received a categorical admission/acknowledgement from the Respondent.

F. BECAUSE the Ld. Trial Court ignored the various categorical admissions and acknowledgements given by the Respondent to the Petitioner that he owed her a sum of Rs 55 lakhs, thereby failing to exercise the jurisdiction vested in it.

G. BECAUSE the Ld. Trial Court also failed to consider the acknowledgement of Rs 35 lakhs given by the Respondent to the Petitioner on WhatsApp, which formed part of the pleadings before it.



H. BECAUSE the Ld. Trial Court also failed to consider the acknowledgement of liability and admissions contained in the Respondent's Written Statement in the Domestic Violence Proceedings.

I. BECAUSE the Ld. Trial Court failed to consider that the alleged set-off claimed by the Respondent in his Written Statement in the Domestic Violence Proceedings amounted to an acknowledgment of debt in view of Food Corporation of India v. Assam State Cooperative Marketing & Consumer Federation Ltd. & Ors. (2004) 12 SCC 360 and Union of India v. Ahmed Din ILR (1973) II Delhi 365;

J. BECAUSE the Ld. Trial Court failed to consider the Respondent admitted that monies belonging to the Petitioner had been utilized by him for his own third-party liabilities. The Respondent did not dispute and/or deny any of the bank transactions that took place.

K. BECAUSE the Ld. Trial Court failed to consider that the Respondent had admitted to using the funds belonging to the Petitioner and had not raised any pleading of gift; and thus, the monies used by the Respondent were a loan (which is duly acknowledged by him in his email-dated 28.10.2019) in view of the pronouncement in Ujjagar Singh v. The Committee of the Management of the Gurudwara Shahidan Ladewal, Mahalpur; AIR 1976 P&H 352..."

13. The petitioner has also filed her written synopsis dated 26th August, 2022 and the submissions contended therein have been reproduced herein:

"..12. In the Impugned Order (Pg 48/Petition), the Ld. Trial Court allowed the Respondent's leave to defend application principally on 2 grounds-(i) the reading of the emails show that there is a triable issue; (ii) the Respondent's defense u/s 10 of



the CPC is a good legal issue (Pg 66-68/Petition). It is most humbly submitted that the said reasoning amounts to material irregularity as it ignores binding precedents & facts on record.

13. In Indian Bank v. Maharashtra State Co-operative Marketing Federation Ltd. (1998) 5 SCC 69- Paras 1, 8, 9 & 10, the Hon'ble Supreme Court has categorically held that the bar of Section 10 is inapplicable at the stage of determining an application for leave to defend in a summary suit. The said judgment was cited before the Ld. Trial Court (Page 61/Petition) but has not been considered in the Impugned Order.

14. Further, in N/MHANS v. C. Parameshwara (2005) 2 SCC 256- Paras 8, 10, the Hon'ble Supreme Court has held that the bar of Section 10 applies only to civil suits. A proceeding under The Protection of Women from Domestic Violence Act, 2005 is not a civil suit and hence the bar u/s 10 would not apply.

15. In any event, Sections 26 and 36 of The Protection of Women from Domestic Violence Act, 2005 provides that the remedies provided under the said Act are in addition and not in derogation of other remedies.

16. It is trite law that non-consideration of material evidence & omission to look into the record are grounds for invoking revisional jurisdiction. The Ld. Trial Court omitted & did not consider the other acknowledgements given by the Respondent, inter alia, the WhatsApp acknowledgement of Rs. 35 lakhs, the email-dated 30.10.2019 & the admissions in the Domestic Violence Written Statement. These acknowledgements were recorded in the Impugned Order (Page 55/Petition); but were not considered by the Ld. Trial Court.



17. The Ld. Trial Court also did not provide any reasons for distinguishing the judgments cited by the Petitioner (Page 60-61 r/w Para 17 at Page 68/Petition).

21. The Respondent claims that the contents of the email-dated 28.10.2019 are a reproduction of an alleged hard copy of a note allegedly sent by the Petitioner. However, no such hard copy of note has been filed by the Respondent & hence any claims to that effect do not have no resemblance of proof. In any event, if the Respondent did not intend to give an acknowledgment of debt, then there was no occasion at all to allegedly reproduce the alleged contents of the hard copy note.

22. The Respondent claims that the Petitioner was informed regarding the movement of monies and/or the Petitioner did not object to the utilization by the Respondent. This is belied by the contemporaneous WhatsApp conversation between the parties, which shows that the Respondent only stated that monies were coming into the account & the Petitioner should not spend it. The Respondent did not state that the inflows were towards repayment of her loan given to ATAPL (Page 77-78/Petition). In Oct 2019, when the Petitioner came to know that her monies had been used, she immediately protested.

23. The Respondent has also made an absurd claim that the monies in the joint bank account belonged to the Respondent and/or that the amount did not belong to the Petitioner. This is contradictory to the balance sheets of AT APL (Pg 667 r/w 677/Petition) & the Respondent's Written Statement in the Domestic Violence proceedings (Pg 107 r/w 141/Petition), both of which record that these specific monies transferred to the joint account legally belonged to the Petitioner. Furthermore, the Petitioner's salary was paid into this account & hence it cannot be said that monies in the joint account belonged to the



Respondent (Pg 73 & 75 /Petition). Lastly, if the monies did not belong to the Petitioner, then there was no occasion for the Respondent to transfer the monies first to the joint account & then to his personal bank account (Para 1 at Pg 20/Petition).

24. Thus, in light of the above, the Respondent has not raised any triable issues or any genuine/bona fide defence. Hence, the present petition may be allowed, and the suit be decreed as prayed for..."

14. In response to the present petition, the respondent had filed his reply dated 22nd August, 2022 wherein he has opposed the present petition by advancing the following arguments:

"...3. That the present petition is nothing but an abuse of process of law as revision petition under Section 115 of the Code of Civil Procedure, 1908 is maintainable only in the event the subordinate court has exercised its power outside its jurisdiction or has failed to exercise its jurisdiction so vested or there has been any material irregularity in exercising the jurisdiction by the subordinate court. It is pertinent to mention that the Ld. Trial Court has passed a speaking order which does not need any interference by this Hon' ble Court. That the Respondent has clearly established by way of the pleadings and the supporting documents that there was no admission to the alleged debt amount on account of the Respondents and the allegations raised by the Petitioner are triable issues which can only be adjudicated through trial. Therefore, the present petition is liable to be dismissed on this ground alone.

*4 . That the Hon'ble Supreme Court in the case of **B.L. Kashyap & Sons Ltd. vs . JMS Steels & Power Corporation** has held that leave to defend shall be allowed unconditionally if the defendant satisfies the Court that he has substantial defense. Moreover, it is settled law that the grant of leave to defend is*



the ordinary rule and denial should be an exception. That for ease of reference, the relevant portion of the said judgment is reproduced hereinbelow: ...

*5. That further, the Hon' ble Supreme Court in the case titled as "**Sudin Dilip Talaulikar vs. Polycap Wires Pvt. Ltd. & Ors.**" has held that where the Defendant had raised substantial defence and raised genuine triable issues, there was no justification to grant conditional leave to defend.*

c. That the contents of sub paragraph 'c ' of the petition are wrong and denied. It is denied that no triable issues arose on the reading of the emails exchanges between the parties. It is denied that the Ld. Trial Court' s conclusion is in direct contravention of the provisions of the Indian Evidence Act, 1872. It is denied that the oral evidence concerning the said emails is barred under the Indian Evidence Act, 1872. It is denied that all the documents were admitted by both the parties. It is submitted that there is no acknowledgment of debt by the Respondent in the matter. The email dated 28.10.2019 and the contemporaneous whatsapp conversations clearly establish denial of alleged acknowledgment/admission by the Respondent. However, the Petitioner is only trying to misled this Hon' ble Court in furtherance of her nefarious motives in furtherance of her personal vendetta against the Respondent.

d. That the contents of sub-paragraph d of the petition are wrong and denied. That it is submitted that the Petitioner was duly informed as early as on 18/05/2018 regarding the amount of Rs.55,00,000/- coming into the joint account and its utilization which was never objected to by the Petitioner. Further, it has been admitted even by her that the money in the



joint account is not hers, and that it belongs to the Respondent. Even otherwise it is submitted that the Petitioner had herself confirmed the reasons for the transaction from the Respondent on each and every transaction but never raised any issue solely because of the fact that the said amount never belonged to the Petitioner. Furthermore, there are multiple confirmation by the Petitioner that the amount in the joint bank account belonged to Respondent only and not to the Petitioner.

*i. That the contents of sub paragraph i of the petition are wrong and denied. That the Ld. Trial Court has rightly allowed the leave to defend application of the Respondent in view of the law settled by the Hon' ble Supreme Court in the case of **B.L. Kashyap and Sons Ltd. vs. Mis. JMS Steels and Power Corporation & Anr.** That the contents of the preliminary submissions and objections and preceding paragraphs may kindly be read as part of the reply to the present paragraph, the contents of which are not repeated herein for the sake of brevity and prolixity.*

6. That the contents of paragraph 6 of the petition are admitted to the extent that the Petitioner was appointed as a Director of ATAPL on 16.07.2012 while rest of the contents of para under reply as stated are wrong and denied. It is specifically denied that the Petitioner with a view of advancing and improving upon the business of ATAPL, advanced various sums to ATAPL over the course of several years. The sums were staggered till Jan 2015, and the investment for equity is still short by over INR 15 Lakhs. It is also denied that total amount of unsecured loan given by the Petitioner to ATAPL was Rs. 1,45,83,000/-. In reply it is stated that the Petitioner and Respondent had agreed



in 2012 that the Petitioner would purchase 20% equity in ATAPL. The amount paid by the Petitioner i.e. a sum of Rs. 1,75,83,000/- to ATAPL were pursuant to her purchase of the said 20% of the equity and out of the said amount, an amount of Rs. 1,45,83,000/- was agreed to be structured as loan and the balance amount as share subscription amount. The Company already had 2 Directors at that time, the Respondent and his father, and the Petitioner was appointed as a 3rd Director. It is also stated that the Petitioner has received an amount of Rs. 65,39,413/- from the Company ATAPL since the year 2012 in lieu of her investment in the Company without even working for a single day for the Company over and above all ancillary benefits. Hence, it cannot be averred on account of the Petitioner that the Petitioner advanced unsecured loan for improving upon the business of ATAPL.

15. The respondent has also filed his written synopsis dated 30th September, 2022 and the submissions made therein are as follows:

“....2. That the Ld. Trial Court vide the impugned order has allowed the application filed by the Respondent under Rule 3(5) of Order XXXVII of CPC thereby granting him unconditional leave to defend, against which the Petitioner has preferred the present petition solely based on false and frivolous grounds.

3. That the present petition filed by the Petition is not maintainable since the Ld. Trial Court has passed a speaking order whilst granting the unconditional leave to defend to the Respondent. That the Respondent has never acknowledged or admitted the alleged debt amount and the same was duly supported by the documents placed on records by the Respondent.

4. That it is submitted that the Petitioner has been relying upon an email dated 28.10.2019 wherein as the per the pleadings of



the Petitioner, the Respondent has allegedly admitted the debt amount. For ease of reference, the said email is reproduced, hereinbelow:.....

5. That from a perusal of the same, it is clear and evident that the Respondent denied accepting the draft of the acknowledgment of alleged debt which was shared by the Petitioner. That the said fact was duly noted by the Ld. Trial Court and accordingly, unconditional leave to defend was granted to the Respondent.

6. Moreover, it is pertinent to submit that the Petitioner, for the purposes of purchasing 20% equity in the Respondent's Company namely Aquaterra Adventures India Pvt. Ltd. was liable to pay a sum of Rs. 1.9 Crores. However, the Petitioner made a payment of a sum of Rs. 1,75,83,000/- only into the Company between 08.08.2012 till 08.01.2015 despite the fact the said 20% equity was already transferred to the Petitioner.

7. That as per the understanding between the Petitioner and the Respondent, the Respondent allowed the Petitioner to pay the equity consideration in tranches and for the purposes of accounting, it was agreed that out of the total consideration of Rs. 1.9 crores, only Rs. 30 Lakhs would be considered as share subscription amount and the balance amount would be considered as perpetual loan by the Petitioner to the Respondent without there being any terms for repayment. Hence, it is categorically clear that there was no due or debt on account of the Respondent which was to be repaid to the Respondent.

*8. That the Hon'ble Supreme Court in the case of **B.L. Kashyap & Sons Ltd. vs. JMS Steels & Power Corporation** AIR 2022*



SC 785 has held that leave to defend shall be allowed unconditionally if the defendant satisfies the Court that he has substantial defense. Moreover, it is settled law that the grant of leave to defend is the ordinary rule and denial should be an exception.

*9. Further, the Hon'ble Supreme Court in the case titled as **Sudin Dilip Talaulikar vs. Polycap Wires Pvt. Ltd. & Ors.** AIR 2019 SC 3380 has held that where the Defendant had raised substantial defence and raised genuine triable issues, there was no justification to grant conditional leave to defend.*

*10. That the Ld. Trial Court duly considered the grounds of defence raised by the Respondent in its leave to defend application (**Annexure P-13**) supported by various documents and has thus granted the Respondent an unconditional leave to defend, therefore, the impugned order passed by the Ld. Trial Court does not require any interference by this Hon'ble Court..."*

PROCEEDINGS BEFORE THIS COURT

(submissions on behalf of the petitioner)

16. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court erred in passing the impugned order as it failed to take into consideration the entirety of the facts and circumstances of the instant dispute.

17. It is submitted that the learned Court below failed to indicate the triable issues which are allegedly present in the instant case and has passed the impugned order hastily by wrongly concluding that there are triable issues and that the respondent has a fair and/or reasonable defence.



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18. It is submitted that the learned Trial Court ignored the categorical admissions and acknowledgements given by the respondent to the petitioner that he owed her a sum of Rs. 55 Lakhs.

19. It is further submitted that the above said admissions/acknowledgements had been filed before the learned Court below which included emails, WhatsApp messages, claim of set-off, and filings before various Courts and the learned Trial Court committed a material irregularity by ignoring these categorical admissions.

20. It is submitted that the learned Trial Court wrongly concluded that a triable issue arose upon reading of the emails exchanged between the parties, when in fact, neither party contended that the contents of the emails were in any way ambiguous requiring extrinsic evidence. Therefore, the learned Trial Court's conclusion is in direct contravention of the provisions of the Indian Evidence Act, 1872 as the oral evidence concerning the said emails is barred under the Indian Evidence Act, 1872.

21. It is submitted that the learned Trial Court failed to consider that the respondent admitted that monies belonging to the petitioner had been utilized by him for his own third-party liabilities. The respondent did not dispute and/or deny any of the bank transactions that took place.

22. It is submitted that the learned Court below failed to appreciate the acknowledgment of Rs. 35 Lakhs given by the respondent to the petitioner on WhatsApp which formed part of the pleadings before it.

23. It is submitted that the learned Trial Court erroneously considered the bar of Section 10 of the CPC while deciding the respondent's application.



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The learned Trial Court failed to consider the judgment of the Hon'ble Supreme Court in *Indian Bank v. Maharashtra State Cooperative Marketing Federation Ltd.*¹, which had been duly filed before it. The said judgment categorically stated that the bar of Section 10 of the CPC would not apply at the time of deciding an application for leave to defend. Thus, the learned Trial Court's decision is contrary to the law as settled by the Hon'ble Supreme Court.

24. It is submitted that the reasoning given in the impugned order is perverse, arbitrary, irrational, and has no basis whatsoever in law, equity or justice.

25. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the impugned order may be set aside.

(submissions on behalf of the respondent)

26. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant petition submitted to the effect that the instant petition is liable to be dismissed since the same is devoid of any merits.

27. It is submitted that the learned Court below has exercised its jurisdiction in accordance to the settled legal propositions and there is no infirmity in the impugned order passed by it, therefore, the petitioner's contentions are baseless.

¹ (1998) 5 SCC 69



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28. It is submitted that the learned Trial Court has taken into consideration the entire facts and circumstances and only after such due consideration, it reached to the conclusion, whereby, it allowed the respondent's application seeking leave to defend.

29. It is submitted that the present revision petition is liable to be dismissed on the grounds that the petitioner has failed to bring up any substantial question of law or any wrong exercise of the provisions of law by the learned Court below.

30. It is submitted that the Hon'ble Supreme Court in ***B.L. Kashyap & Sons Ltd. v. JMS Steels & Power Corpn.***² has held that the leave to defend shall be allowed unconditionally if the defendant satisfies the Court that he has substantial defence. Moreover, it is a settled law that the grant of leave to defend is the ordinary rule and denial should be an exception.

31. It is submitted that the Hon'ble Supreme Court in ***Sudin Dilip Talaulikar v. Polycap Wires (P) Ltd.***³, has held that where the defendant had raised substantial defence and raised genuine triable issues, there was no justification to grant unconditional leave to defend.

32. It is submitted that the respondent has clearly established that there is a triable issue in so much so that the petitioner has been relying upon an email dated 28th October, 2019 for the alleged admission by the respondent, however, the same was not reproduced by the petitioner along with her suit.

² (2022) 3 SCC 294

³ (2019) 7 SCC 577



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33. It is further submitted that as per the contents of the aforementioned email, it is clear that the respondent rejected the draft of acknowledgment of debt which was shared by the petitioner. Hence, the same is correctly held to be a triable issue by the learned Court below.

34. It is submitted that the petitioner has filed the above said civil suit for recovery along with various other litigations against the respondents in order to create undue pressure and to extort monies from him for her unjust enrichment.

35. It is submitted that the petitioner and the respondent got married on 15th April, 2012 and thereafter, the petitioner was appointed a director of ATA IPL on 16th July, 2012. On 6th August, 2012, the respondent sent an email to the petitioner explaining her the details of investment which could be made by the petitioner into the Company by purchasing 20% equity in the Company along with details of the then valuation of the Company which was around Rs. 10.6 Crores without even including adventure travel business of the Company and the petitioner was given 2 options of purchasing 15% equity @ Rs. 1.4 Crores or 20% equity @ Rs. 1.9 Crores.

36. It is also submitted that pursuant to the above, the petitioner made payment of a sum of Rs. 1,75,83,000/- into the Company between 8th August, 2012 till 8th January, 2015. Despite the fact that 20% equity in the Company had already been transferred to the petitioner in August, 2012, the petitioner had only made partial payment of Rs. 1,37,00,000/- as against the agreed amount of Rs. 1.9 Crores for 20% equity in the Company.



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37. It is further submitted that the respondent sent another email dated 8th November, 2013 to the petitioner and informed her about the transfer of the equity and awaiting payment of the part of the balance equity consideration from Rs. 1.9 Crores for 20% equity in the Company. The same was duly acknowledged by the petitioner vide her reply dated 8th November, 2013.

38. It is submitted that as per the understanding between the petitioner and the respondent, the respondent allowed the petitioner to pay the equity consideration in tranches and for the purposes of accounting, it was agreed that out of the total consideration of Rs. 1.9 Crores, only Rs. 30 Lakhs would be considered as share subscription amount and the balance amount would be considered as perpetual loan by the petitioner to the respondent without there being any terms for repayment.

39. It is further submitted that during the period of 2017–18, the petitioner and respondent got separated on account of marital discord resulting in building up of tensions between them in their personal relationship as husband and wife. In light of the same, the petitioner initiated litigations against the respondent and the Company at various fora.

40. It is submitted that the petitioner herein is heavily relying upon the email dated 28th October, 2019 to prove the alleged admission on account of the respondent, however, the contents of the said email relied upon the by the petitioner to establish acknowledgement by the respondent is nothing but reproduction of the contents of the hard copy of the note sent by the petitioner to the respondent which was refused to be acknowledged by the



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respondent. The said fact is also evident from the WhatsApp conversation between the petitioner and respondent on 28th October, 2019.

41. It is submitted that the petitioner herself admitted the money in the joint account to be respondent's money inasmuch as the petitioner has never funded the said account.

42. It is further submitted that the petitioner has also duly signed the balance sheets of the Company knowing fully well that the entire amount paid by her was share subscription amount agreed to be structured as loan. As such, there were no terms of repayment. As admitted by the petitioner, the respondent is the primary account holder of the joint account and has right to access the said account. Despite the fact that the petitioner has signed balance sheets for the period of 2018 – 2019, the petitioner started creating disputes from August, 2019 onwards after the advent of the marital discord between the petitioner and the respondent.

43. Therefore, in view of the submissions made above, it is submitted that instant petition being devoid of any merits may be dismissed.

SCHEME OF THE ACT

(Section 115 of the CPC – Revisional Powers of this Court)

44. Before delving into the technical paraphernalia of the facts of the instant matter, it is pertinent for this Court to set out the scope of Section 115 of the CPC, under which the petitioner has challenged the impugned order. The said Section has been reproduced for reference hereunder:



“115. Revision.— [(1)] *The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—*

- (a) to have exercised a jurisdiction not vested in it by law, or*
- (b) to have failed to exercise a jurisdiction so vested, or*
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:*

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.]

[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

Explanation.— In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue in the course of a suit or other proceeding.]”

45. Section 115 of the CPC invests all High Courts with revisional jurisdiction. It declares that the High Court may call for the record of any



case which has been decided by any Court subordinate to such High Court wherein no appeal lies, to satisfy itself on three aspects; (i) that the order passed by the subordinate Court is within its jurisdiction; (ii) that the case is one in which the Court has power to exercise its jurisdiction; and (iii) that in exercising jurisdiction the Court has not acted illegally, that is, breach of some provision of law, or with material irregularity, that is by committing some error of procedure in the course of trial which is material in that it may have affected the ultimate decision.

46. In the landmark case of **Major S.S. Khanna v. Brig. F.J. Dillon**⁴, the Hon'ble Supreme Court stated that the said Section consists of two parts, *firstly* it prescribes the condition in which jurisdiction of the High Court arises, i.e., there is a case decided by the subordinate Court in which no appeal lies to the Court of higher jurisdiction, *secondly* it sets out the circumstances in which the jurisdiction may be exercised by the High Court. If there is no question of jurisdiction, the concerned decision cannot be corrected by the High Court in the exercise of revisional powers. The relevant paragraphs of **Major S.S. Khanna (Supra)** have been reproduced herein:

“6. The jurisdiction of the High Court to set aside the order in exercise of the power under Section 115 of the Code of Civil Procedure is challenged by Khanna on three grounds:

(i) that the order did not amount to “a case which has been decided” within the meaning of Section 115 of the Code of Civil Procedure;

⁴ (1964) 4 SCR 409



(ii) that the decree which may be passed in the suit being subject to appeal to the High Court; the power of the High Court was by the express terms of Section 115 excluded; and

(iii) that the order did not fall within any of the three clauses (a), (b) and (c) of Section 115.

The validity of the argument turns upon the true meaning of Section 115 of the Code of Civil Procedure, which provides:

“The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.”

The section consists of two parts, the first prescribes the conditions in which jurisdiction of the High Court arises i.e. there is a case decided by a subordinate Court in which no appeal lies to the High Court, the second sets out the circumstances in which the jurisdiction maybe exercised. But the power of the High Court is exercisable in respect of “any case which has been decided”. The expression “case” is not defined in, the Code, nor in the General Clauses Act. It is undoubtedly not restricted to a litigation in the nature of a suit in a civil court : Balakrishna Udayar v. Vasudeva Aiyar [LR 44 IA 261] ; it includes a proceeding in a civil court in which the jurisdiction of the Court is invoked for the determination of some claim or right legally enforceable. On the question whether an order of a Court which does not finally dispose of the suit or proceeding amounts to a “case which has been



decided”, there has arisen a serious conflict of opinion in the High Courts in India and the question has not been directly considered by this Court. One view which is accepted by a majority of the High Courts is that the expression “case” includes an interlocutory proceeding relating to the rights and obligations of the parties, and the expression record of any case includes so much of the proceeding as relates to the order disposing of the interlocutory proceeding. The High Court has therefore power to rectify an order of a Subordinate Court at any stage of a suit or proceeding even if there be another remedy open to the party aggrieved i.e. by reserving his right to file an appeal against the ultimate decision, and making the illegality in the order a ground of that appeal. The other view is that the expression “case” does not include an issue or a part of a suit or proceeding and therefore the order on an issue or a part of a suit or proceeding is not a “case which has been decided”, and the High Court has no power in exercise of its revisional jurisdiction to correct an error in an interlocutory order.”

47. The provision thus takes within its limited jurisdiction, the irregular exercise or non-exercise of it, or the illegal assumption of it. It is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. In other words, it is only in cases where the subordinate Court has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the jurisdiction of the High Court may be properly invoked.

48. The term ‘jurisdiction’ has not been defined in the CPC. The definition of the same has been defined by the Hon’ble Supreme Court and



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various High Courts by way of judgments over the years. The said term means ‘the power of a Court to hear and decide a case or to pass a certain order’ and ‘the right or authority to apply laws and administer justice’. The expression ‘jurisdiction’ can be interpreted in different manners but the adoptive definition of the same has to be interpreted subjectively, i.e., depending upon the nature of the facts and circumstances of each case.

49. It is a settled principle of law that the lower Courts have jurisdiction to decide the case, and in context of the provision of revision, even if the Court below decides the case wrongly, they do not exercise their jurisdiction illegally or with material irregularity.

50. Section 115 of the CPC, deals with the High Court’s power of revision. Briefly stated, in a case which is not subject to appeal, the High Court is empowered to call for the records of the case decided by the Court below, and if the Court below has exercised a jurisdiction vested in it by law, or failed to exercise jurisdiction vested by law or acted with material irregularity, etc. in the exercise of its jurisdiction, the High Court may interfere.

51. The CPC, however, enables the High Court to correct, when necessary, the errors of jurisdiction committed by the subordinate Courts and provides the means to an aggrieved party to obtain rectification in a non-appealable order. In other words, for the effective exercise of its superintending powers, revisional jurisdiction is conferred upon the High Court. The said principle has been reaffirmed by the Hon’ble Supreme Court



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in the judgment of ***Manick Chandra Nandy v. Debdas Nandy***⁵. The Hon'ble Court in the said judgment had observed as follows:

“5. We are constrained to observe that the approach adopted by the High Court in dealing with the two revisional applications was one not warranted by law. The High Court treated these two applications as if they were first appeals and not applications invoking its jurisdiction under Section 115 of the Code of Civil Procedure. The nature, quality and extent of appellate jurisdiction being exercised in first appeal and of revisional jurisdiction are very different. The limits of revisional jurisdiction are prescribed and its boundaries defined by Section 115 of the Code of Civil Procedure. Under that section revisional jurisdiction is to be exercised by the High Court in a case in which no appeal lies to it from the decision of a subordinate court if it appears to it that the subordinate court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction vested in it by law or has acted in the exercise of its jurisdiction illegally or with material irregularity. The exercise of revisional jurisdiction is thus confined to questions of jurisdiction. While in a first appeal the court is free to decide all questions of law and fact which arise in the case, in the exercise of its revisional jurisdiction the High Court is not entitled to reexamine or reassess the evidence on record and substitute its own findings on facts for those of the subordinate court. In the instant case, the respondents had raised a plea that the appellant's application under Rule 13 of Order IX was barred by limitation. Now, a plea of limitation concerns the jurisdiction of the court which tries a proceeding, for a finding on this plea in favour of the party raising it would oust the jurisdiction of the court. In determining the correctness of the decision reached by the subordinate court on such a plea, the High Court may at

⁵ (1986) 1 SCC 512



times have to go into a jurisdictional question of law or fact, that is, it may have to decide collateral questions upon the ascertainment of which the decision as to jurisdiction depends. For the purpose of ascertaining whether the subordinate court has decided such a collateral question rightly, the High Court cannot, however, function as a court of first appeal so far as the assessment of evidence is concerned and substitute its own findings for those arrived at by the subordinate court unless any such finding is not in any way borne out by the evidence on the record or is manifestly contrary to evidence or so palpably wrong that if allowed to stand, would result in grave injustice to a party.”

(Order XXXVII Rule 3 (v) of the CPC – Application seeking leave to defend)

52. In the instant case, the dispute revolves around Order XXXVII Rule (3) of the CPC. The issue for adjudication before this Court is whether the respondent’s application seeking leave to defend was rightly decided upon by the learned Court below. Therefore, in order to analyze the same, it is pertinent for this Court to set out the settled legal propositions *qua* the principle of leave to defend. The relevant portion of the above said provision has been reproduced hereunder:

***“..ORDER XXXVII
SUMMARY PROCEDURE²***

¹[3. Procedure for the appearance of defendant—(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance



either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court....”

53. Order XXXVII of the CPC outlines the provisions for the summary procedure in certain suits. The primary objective of this provision is to facilitate the expeditious resolution of specific types of cases, primarily those related to commercial transactions and debts. The key features and procedures under Order XXXVII have been elucidated in the paragraphs below.

54. The above said provision prescribes that the Court is tasked with resolving the complexities in a suit which by nature of it is called a summary suit, a judicial procedure intended to fast track the resolution of business disputes. The said provision is a procedural mechanism that grants the



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plaintiff with an authority to promptly seek redress in situations where the legal claim originates from a documented agreement, such as a promissory note, bill of exchange, or similar instrument. The effectiveness of Order XXXVII of the CPC resides in its essence which is to optimize the litigation process, thereby, offering a swifter and more economical method of adjudication in contrast to conventional civil suits. Nevertheless, the said swiftness of this method is counterbalanced as the plaintiff is required to substantiate his case from the beginning of the proceedings in the recovery suit filed under the said provision.

55. In accordance with the summary nature of the proceedings, Order XXXVII of the CPC eliminates the customary requirement for the defendant to provide a written statement. Alternatively, the defendant must make an appearance within a specified period. If they fail to do so, the plaintiff has the right to request a default judgment. This deviation from the standard practice assumes that when the plaintiff's claim is based on a clearly defined contractual term, the defendant's defence, if any, should be raised without any delay. The timeframe established by Order XXXVII of the CPC, is a characteristic that demonstrates its effectiveness. The legislature, in its wisdom, has acknowledged the necessity for expeditious resolution in commercial matters to avert financial detriment to the parties involved. This is apparent in the stringent deadlines set for submitting the written statement, which guarantees that the defendant is provided with a fair chance to convey their case, albeit within a condensed timeframe.



56. Nevertheless, it is crucial to acknowledge that the abridged procedure under Order XXXVII of the CPC, does not undermine the norms of natural justice. Therefore, under Rule 3 of Order XXXVII of the CPC, a defendant is granted a just and equitable chance to argue their defence. The delicate equilibrium between swiftness and impartiality is inherent to the effectiveness of Order XXXVII of the CPC. An important characteristic of Order XXXVII of the CPC, is the inclusion of a provision for summary judgment. This allows the Court to decide at an early stage, the substance of the case without the requirement of a full-fledged trial. After reviewing the pleadings, affidavits, and any other submitted materials, the Court has the authority to determine if there is a significant issue that must be resolved in a trial. Otherwise, the Court may proceed to issue a summary judgment, which would expedite the resolution of the dispute.

57. The legal principles guiding the grant or refusal of leave to defend have been established by the Hon'ble Supreme Court in cases such as *IDBI Trusteeship Services Limited vs. Hubtown Limited*⁶; *Sudin Dilip Talaulikar (Supra)* and *B.L. Kashyap & Sons Ltd (Supra)*.

58. As this Court considers the instant case, it is important to carefully navigate the legal rules outlined *qua* the principle of leave to defend under Order XXXVII of the CPC. In light of the same, certain judgments under which the benchmark of adjudicating such provisions is enunciated have been discussed herein below.

⁶ (2017) 1 SCC 568



59. The Hon'ble Supreme Court in one of its landmark judgments namely ***IDBI Trusteeship Services Ltd. v. Hubtown Ltd.***⁷ has discussed in length the yardstick needed to be followed in an application seeking leave to defend in a recovery suit filed under Order XXXVII of the CPC. The relevant portion of the same is as follows:

“16. It is thus clear that Order 37 has suffered a change in 1976, and that change has made a difference in the law laid down. First and foremost, it is important to remember that Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36] is a direct authority on the amended Order 37 provision, as the amended provision in Order 37 Rule 3 is the same as the Bombay amendment which this Court was considering in the aforesaid judgment. We must hasten to add that the two provisos to sub-rule (3) were not, however, there in the Bombay amendment. These are new, and the effect to be given to them is something that we will have to decide. The position in law now is that the trial Judge is vested with a discretion which has to result in justice being done on the facts of each case. But Justice, like Equality, another cardinal constitutional value, on the one hand, and arbitrariness on the other, are sworn enemies. The discretion that a Judge exercises under Order 37 to refuse leave to defend or to grant conditional or unconditional leave to defend is a discretion akin to Joseph's multi-coloured coat — a large number of baffling alternatives present themselves. The life of the law not being logic but the experience of the trial Judge, is what comes to the rescue in these cases; but at the same time informed by guidelines or principles that we propose to lay down to obviate exercise of judicial discretion in an arbitrary manner. At one end of the spectrum is unconditional

⁷ (2017) 1 SCC 568



leave to defend, granted in all cases which present a substantial defence. At the other end of the spectrum are frivolous or vexatious defences, leading to refusal of leave to defend. In between these two extremes are various kinds of defences raised which yield conditional leave to defend in most cases. It is these defences that have to be guided by broad principles which are ultimately applied by the trial Judge so that justice is done on the facts of each given case.

17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36] , 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....”

60. In ***Sudin Dilip Talaulikar (Supra)***, the Hon’ble Supreme Court while reaffirming the law laid down in ***IDBI Trusteeship Services Ltd. (Supra)*** observed as under:



“10. In a summary suit, if the defendant discloses such facts of a prima facie fair and reasonable defence, the court may grant unconditional leave to defend. This naturally concerns the subjective satisfaction of the court on the basis of the materials that may be placed before it. However, in an appropriate case, if the court is satisfied of a plausible or probable defence and which defence is not considered a sham or moonshine, but yet leaving certain doubts in the mind of the court, it may grant conditional leave to defend. In contradistinction to the earlier subjective satisfaction of the court, in the latter case there is an element of discretion vested in the court. Such discretion is not absolute but has to be judiciously exercised tempered with what is just and proper in the facts of a particular case. The ultimate object of a summary suit is expeditious disposal of a commercial dispute. The discretion vested in the court therefore requires it to maintain the delicate balance between the respective rights and contentions by not passing an order which may ultimately end up impeding the speedy resolution of the dispute.

12. In Hubtown Ltd. [IDBI Trusteeship Services Ltd. v. Hubtown Ltd., (2017) 1 SCC 568:(2017) 1 SCC (Civ) 386] , this Court has laid down the principles which should guide exercise of such discretion as follows: (SCC pp. 596-97, para 17)...

13. In our opinion, both the Civil Judge and the High Court have posed unto themselves the wrong question and have therefore misdirected themselves in application of the above principles by granting conditional leave to defend without properly advertent and referring to the facts of the case and the materials on record. The fact that there was commercial dealing between the parties was not in issue at all. According to the plaint of the respondent, commercial dealings between the parties ended on 3-6-2011. It stands to reason why outstanding



payment in respect of the same came to be made by cheque as late as 1-3-2014. It does not appeal to logic or reason much less to the usual practice in commercial dealings. In any event the respondent has not furnished any explanation with regard to the same. At this stage it becomes necessary to notice the contention of the appellant that the signatures and the contents of the cheques are in different writings. The respondent had the option to institute a summary suit at the very inception of the dispute. But it consciously opted for a prosecution under the Act which undoubtedly was a more efficacious remedy for recovery of any specified amount of a dishonoured instrument raising a presumption against the drawer, as in a summary suit the possibility of leave to defend could not be completely ruled out, in which case the recovery gets delayed and protracted...”

61. Furthermore, in ***B.L. Kashyap & Sons Ltd (Supra)***, the Hon’ble Supreme Court observed the following while bearing in mind the aforesaid citations. The relevant portion of the same is as under:

“...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 raises triable issues indicating a fair or bona fide 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 appears 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.

34. When we apply the principles aforesaid to the facts of the present case and to the impugned orders [B.L. Kashyap & Sons Ltd. v. JMS Steel & Power Corpn., 2018 SCC OnLine Del 9047] , it is at once clear that after finding the suit to be maintainable under Order 37 CPC because of assertion of the plaintiff about joint and several liability of the defendants, the High Court concluded that the defences were frivolous and vexatious. The trial court had observed that the defendants failed to raise any triable issues. It appears that while recording such conclusions, the trial court as also the High Court totally omitted to consider that the appellant-Defendant 2 has been contesting its liability with the assertion that it had only been the contractor executing the work of Defendant 1. Even as per the plaint averments and the plaintiff's assertions, Defendant 1 had made various payments from time to time against the supplies of the building material. The cheques, allegedly towards part-payment against the supplies made by the plaintiff, had been issued by Defendant 1. In the given set of circumstances, the conclusion of the High Court that the defence raised by the appellant was frivolous or vexatious could only be treated as an assumptive one and lacking in requisite foundation..."



62. Perusal of the above judgments states that the governing principle with respect to an application seeking leave to defend is settled. 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 provide even a semblance of issues that are triable before the Court.

63. The law prescribes certain established guidelines, which, if found to be existing in a certain case, application for leave to defend may be allowed. The Hon'ble Supreme Court categorically states that in the event a defendant satisfies the Court that he has a substantial defence which in the opinion of the concerned Court is likely to succeed, the plaintiff in such case would not be entitled the leave to sign judgment, instead the defendant will be entitled to unconditional leave to defend the suit. Furthermore, an unconditional leave to defend is granted by a Court when it is shown by the defendant that he has a reasonable defence, although not a positively good defence. Apart from the aforesaid, there are certain other guidelines narrated by the Hon'ble Supreme Court which enunciates the principle to grant conditional leave to defend. Another point can be noted upon reading of ***IDBI Trusteeship Services Ltd. (Supra)***, as per which 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 the Court.



64. The inclusion of a summary judgment presents several difficulties. The adjudicating Court is entrusted with the intricate duty of evaluating the evidence and determining the legal validity of the case, notwithstanding the absence of a full-fledged trial. This requires a thorough analysis of the legal documents and evidence to verify that all the necessary conditions for a summary judgment are satisfied. When exercising this discretionary authority, the Court must be watchful to prevent any abuse of the summary procedure.

65. It does not serve as a means to bypass the standard trial procedure, but rather as a method to promptly resolve matters that fulfil the strict requirements established by Order XXXVII of the CPC. The Court's ability to grant summary judgment is limited to a thorough evaluation of the relevant facts and legal matters.

66. The implementation of Rule 3 of Order XXXVII of the CPC necessitates a careful equilibrium between promptness and impartiality. The approach of the said provision is simply to ensure prompt resolution of commercial disputes. However, the effectiveness of the process there under depends on strictly following its procedural rules and carefully using judicial discretion.

67. Under Order XXXVII of the CPC, the purpose is to allow the plaintiff to swiftly recover their dues without the need for a lengthy regular lawsuit. However, Rule 3 of the said Order states that if the defendant can convince the Court that they have a valid defence or that there are genuine issues that need a trial, the plaintiff cannot be granted to proceed with a summary



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judgment. In such cases, the defendant is given unconditional permission to defend the lawsuit.

ANALYSIS AND FINDINGS

68. The matter was heard at length with arguments advanced by the learned counsel on both the sides. This Court has also perused the entire material on record and has duly considered the factual scenario of the matter, judicial pronouncements relied upon by the parties, and pleadings presented by the learned counsel of the parties.

69. The scope and extent of the revisional powers of this Court along with the principle *qua* the application seeking leave to defend have been discussed in depth in the foregoing paragraphs. Now, advertng to the facts of the instant case.

70. Briefly stated, the question that arises before this Court is whether the learned Trial Court has correctly exercised the discretion by granting unconditional leave to defend the summary suit instituted by the petitioner against the respondent.

71. It is the case of the petitioner that the learned Trial Court has allowed the respondent's application seeking unconditional leave to defend and the same is erroneous due to the fact that the learned Court below failed to take into consideration the documents produced before it, as per which the respondent had evidently admitted his liability towards the petitioner with respect to the sum of Rs. 55 Lakhs. It has been contended by the petitioner that in light of the clear and categorical admissions on part of the respondent there is no case made out for defence of the defendant, i.e., the respondent



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herein, in the suit for recovery filed against him. Hence, it has been prayed that the impugned order may be set aside.

72. In rival submissions, it has been submitted on behalf of the respondent that there is no such error in the impugned order since the learned Trial Court has passed the same after taking into consideration the entire facts and circumstances. It has been further submitted that there is no admission behalf of the respondent. It has been denied by the respondent that no triable issues arose upon reading of the exchange of emails between the parties. It has also been denied that the learned Trial Court's conclusion is in direct contravention of the provisions of the Indian Evidence Act, 1872. The respondent has further submitted that there is no acknowledgment of debt by the respondent in the instant matter. The email dated 28th October, 2019 and the contemporaneous WhatsApp conversations clearly establish denial of alleged acknowledgment/admission by the respondent. It has been also submitted that the petitioner is only trying to mislead this Court in furtherance of her nefarious motives and her personal vendetta against the respondent.

73. In order to analyze the impugned order, relevant portions of the same have been reproduced as under:

“...14. Perusal of the email shows that the defendant is accepting the receiving whatsapp draft message for his sign which was unacceptable by him and further in the email the defendant was asking from the plaintiff that if the settlement is to be made it will be done in toto closing her equity which continue to hold and enjoy but hold not responsibility to their



and also whispered about the settlement between the plaintiff and the defendant.

15. Perusal of record reveals that on 25.10.2019 one more email was sent by the defendant to the plaintiff with the above said subject as mentioned in the email dated 28.10.2019 wherein it is mentioned about refusal to sign the company balance sheet by the plaintiff inspite of repeated request and also mentioned about the liabilities and consequences. Further another email dated 28.10.2019 at 19.11 with the same subject as mentioned above in the email made by the plaintiff to the defendant sharing about the signing of balancesheet of the company ATAPL and loan amount of Rs. 1.45,08,000/- and payment of Rs. 60,00,000/- by the aforesaid company in the joint account of plaintiff and defendant. Further it has also been mentioned that the, plaintiff is asking for receiving of alleged amount of Rs. 55,00,000/- as repayment of her loan and further in the email plaintiff is alleging that the defendant has appropriated the aforesaid amount of Rs. 55,00,000/-. Therefore, on careful conjoint reading of aforesaid emails and whatsapp conversations dated 25.10.2019 to 28.10.2019 shows that the 'defendant has clearly establish that there exists triable issue indicating he is having a fair and reasonable defence.

16. Moreover, defendant has also raised other legal issues with regard to bar of Section 10 of CPC stating that plaintiff has already claimed the aforesaid amount of Rs. 55, 00,000/- claimed in the suit with respect of alleged claim is directly and substantially in issue in Domestic Violence Proceedings before Ld. MM. It is pertinent to note that there is inconsistency in the averments of the plaintiff qua the domestic violence proceedings and the present suit. It is seen in the suit that the plaintiff has only mentioned about pendency of the domestic violence proceedings but she has not disclosed about the fact that the amount claimed in the present suit has already been



claimed in that proceedings in the prayer clause which is being reproduced here:

"Direct the Respondent to pay to the Complainant a sum of Rs. 55,00,000/- (Rupees fifty five lakhs only) which is the conversation of part of the corporate loan given by the complainant to the company, Aqua Terra Adventure Pvt. Ltd, to a personal loan when the said sum was withdrawn by the respondent, first from the company's bank account to the parties joint account, thereafter, from the parties joint account and account 09.07.2018, 22.12.2018 and 05.08.2019 along-with 12% pa interest thereon until payment is made under Section 20(1) of the Act."

As such perusal of the prayer of the domestic violence shows the plaintiff has not only claimed alleged Rs. 55 lakh in the prayer but also perusal of the prayer reveals that the plaintiff is talking about the conversion of the part of the corporate loan given by her to the ATAPL to be personal loan by the defendant when the same withdrawn by the defendant. It may be seen that there is a dispute with regard to the amount in the present suit with respect to the alleged recovery of Rs. 55 lakh which is directly and substantially in issue in the domestic violence proceeding which was also initiated by the plaintiff against the defendant. Therefore, the defendant has raised the good and legally sustainable defence which need trial of the matter.

18. Therefore, in view of aforesaid discussion and applying the principles laid down in the aforesaid case law, the defendant has raised tliable issues indicating fair, bonafide, reasonable and good defence, therefore, the defendant is entitled to unconditional leave to defend. Hence, the application seeking leave; to defend is allowed. Accordingly, leave to defend is granted. Application stands disposed..."



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74. Perusal of the above shows that the learned Trial Court whilst adjudicating upon the respondent's application seeking leave to defend considered certain documents and submissions made on behalf of the parties to the effect that the same amounted to existence of triable issues which it found imperative to decide upon before passing a judgment and hence, it was of the opinion that the respondent must be granted leave to defend unconditionally.

75. This Court shall now look into the grounds taken by the respondent in his application file under Order XXXVII Rule 3 of the CPC, seeking leave to defend.

76. Upon perusal of paragraphs c, d, e, f, g; paragraph no. 7, 9, 10, 12 and 13 of the application dated 6th November, 2020 filed by the respondent seeking leave to defend, it is observed that the defendant had raised certain grounds which were purported to be trivial in nature since it revolves around the nature and background of the case. Upon perusal of the said application, this Court has observed the below mentioned grounds of defence that the respondent had submitted against the suit for recovery filed against him:

- a. The nature and background of the amount advanced by the petitioner to ATAIPL which as per the petitioner is a loan advanced to ATAIPL whereas as per the respondent the same is a part of the total amount for payment of purchase of shares and subscription in the above said Company, and that the rest of the amount is loan.



- b. The nature and background of the amount transferred to the joint bank account of the present parties which as per the petitioner was transferred by the respondent to the said joint account and then to different accounts in order to pay-off his third party liabilities. On the contrary, the respondent stated that the said account was also operated by the petitioner and that she was fully aware about the transactions happening therein.
- c. The petitioner had stated in her suit that respondent has admitted and acknowledged the amount of debt which is owed by him to the petitioner whereas the respondent contended and produced certain screenshots of Whatsapp conversations among the parties wherein the respondent is accepting the message of draft of settlement by stating that the same is unacceptable to him. Further, relying upon the aforementioned email, the respondent stated that the petitioner's reliance upon the same is in part and in the event the same is read in toto, it can be inferred that the respondent has denied its liability towards repayment of the above said amount.
- d. Further, the respondent in his application had contended that the petitioner has sought payment of Rs. 55 Lakhs from the respondent in her petition under Section 12 of the Protection of Women for Domestic Violence Act, 2005 which is



pending before the Saket Court. Therefore, the respondent had submitted in his defence that the suit filed by the petitioner under Order XXXVII of the CPC is barred by Section 10 of the CPC. Moreover, the respondent had submitted before the learned Court below that the petitioner did bring on record the fact that the above said petition was pending but had failed to disclose about the fact that the amount so claimed in the recovery suit has already been claimed in the domestic violence proceedings.

77. The learned Trial Court whilst adjudicating the respondent's application under Order XXXVIII Rule 3 of the CPC noted the above said points and reached to the conclusion that the defendant, i.e. the respondent herein had raised a good and legally sustainable defence which need trial of the matter before it.

78. At this stage, it is pertinent to state that upon perusal of the contentions of the petitioner and the respondent as well as the various emails, WhatsApp conversation, bank account statement, computation sheet of the sum claimed in the plaint the balance of the company and share allotment form filed by ATAIPL etc., it is evident that the respondent has, to some extent, admitted and acknowledged his liabilities with respect to the money which he allegedly owes to the petitioner. However, it is categorically noted that at no stage the exact quantum of money, which has been alleged by the petitioner, could be inferred by this Court.



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79. Furthermore, in paragraph 16 of the impugned order, the learned Trial Court specifically noted that the petitioner in her domestic violence petition had prayed for '*Direct the Respondent to pay to the Complainant a sum of Rs. 55,00,000/- (Rupees fifty five lakhs only) which is the conversation of part of the corporate loan given by the complainant to the company, Aqua Terra Adventure Pvt. Ltd, to a personal loan when the said sum was withdrawn by the respondent, first from the company's bank account to the parties joint account....*'. With regard to the same, the learned Trial Court held that there is a dispute with regard to the amount in the recovery suit which is also directly and substantially an issue in the domestic violence proceeding.

80. Hence, after appreciating on all the above said grounds and taking into consideration the actual facts and circumstances as well as the annexures produced before it including the WhatsApp conversations and the emails, the learned Trial Court was of the view that the respondent has raised good and legally sustainable defence and the issues raised are of triable in nature. Therefore, it granted the respondent an unconditional leave to defend.

81. This Court is of the considered view that the learned Trial Court has appreciated the entire facts and documents produced before it and has deliberated upon the same in accordance with the settled law. Furthermore, it is only after the contemplation of the issues raised before it by the petitioner and the respondent, the learned Court reached to the above mentioned conclusion and accordingly, the contention of the petitioner that the learned Court has passed the impugned order hastily is baseless and hereby, rejected.



82. It is observed by this Court that there seems to be merit in the defence of the respondent as the facts have been disputed and the same leads to challenge the essence of the recovery suit initiated by the petitioner against the respondent.

83. This Court has also taken into consideration the range of disputes pending and the admitted marital discord among the parties including the domestic violence petition, divorce petition, company petition before the NCLT etc. It can be deciphered that the nature of disputes which exist among the parties is serious and the same consists of complexities which can only be adjudicated by way of a full-fledged trial thereby having sufficient argument, leading of evidence, rebuttal etc.

84. This Court in the foregoing paragraphs has discussed the various issues which have been raised by the respondent and opposed by the petitioner, but in order to ascertain the real and undisputed facts, the respondent must be granted leave to defend against the petitioner's suit.

85. Upon perusal of the leave to defend application which is appended as Annexure P-13 with the instant petition, this Court is of the view that the respondent has a substantial defence which is likely to succeed and in view of the same, the respondent is entitled to unconditional leave to defend the above said recovery suit.

86. Therefore, considering the limited scope of interference under the civil revisional jurisdiction, this Court is not inclined to exercise its revisional powers since no infirmity or irregularity, or illegality is found in the impugned order. It is held that the learned Court below has exercised its



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jurisdiction under Order XXXVII Rule 3 of the CPC in accordance with the settled law.

CONCLUSION

87. The mere fact that a decision of the Trial Court is erroneous due to a question of fact or of law does not amount to any illegality or a material irregularity. Only those matters are to be allowed under the revisional jurisdiction of the High Court, wherein, there has been an irregular exercise, or non – exercise, or the illegal assumption of the jurisdiction by the Court below. It is a settled law that under Section 115 of the CPC, this Court has to look only into the issue of the jurisdiction of the Court below in deciding any application and shall not go into the merits of the case.

88. It has been deliberated by way of the aforementioned judgments and discussions of facts that there are no errors of jurisdiction in the impugned order as assailed by the petitioner. This Court is of the considered view that there is no force in the arguments advanced by the petitioner, hence, not inviting any interference of this Court.

89. Therefore, it is held that the petitioner has been unable to make out a case for grant of relief of revision of the impugned order under Section 115 of the CPC. The learned Trial Court has exercised its jurisdiction in accordance with the law and hence, the arguments advanced by the petitioner against the impugned order are rejected. It is pertinent to mention herein that this Court has not gone into the merits of the petitioner's recovery suit and the respondent's defence.



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90. In light of the above discussion of facts and law, impugned order dated 22nd April, 2022, passed by the learned ADJ-04, South-East, Saket Court, Delhi, in CS No. 352/2020, is hereby, upheld.

91. Accordingly, the instant petition stands dismissed along with pending applications, if any.

92. The judgment be uploaded on the website forthwith

(CHANDRA DHARI SINGH)
JUDGE

FEBRUARY 15, 2024
gs/ryp/av