

**IN THE HIGH COURT AT CALCUTTA**  
**ORIGINAL SIDE**  
**COMMERCIAL DIVISION**

**Present:**

**The Hon'ble Justice Krishna Rao**

**G.A. (COM) No. 2 of 2024**

**In**

**C.S. (COM) No. 697 of 2024**

**Anubandh Financial Services Private Limited**

**Versus**

**M/s, Skipper Furnishing Private Limited & Anr.**

Mr. Aniruddha Mitra, Sr. Adv.

Mr. Deepnath Roy Choudhury

Mr. Bhaskar Dwivedi

Mr. Souvik Kundu

Mr. Abir Debnath

... For the plaintiff.

Mr. Debrup Mukherjee

Mr. Nikunj Berlia

Mr. Varun Kothari

Ms. Urvashi Jain

Ms. Srija Chakraborty

.... For the defendants.

Hearing Concluded On : 19.06.2025

Judgment on : 25.06.2025

**Krishna Rao, J.:**

1. The defendants have filed an application being G.A. (Com) No. 2 of 2024 praying for condoning the delay of one (1) day in filing the present application and for grant of leave to defend the suit.
2. Mr. Debrup Mukherjee, Learned Advocate representing the defendants submits the suit filed by the plaintiff is barred by limitation as the last cause of action alleged to have arose on 1<sup>st</sup> October, 2019 and time to file suit expired on 1<sup>st</sup> October, 2022 but the plaintiff has filed the present suit on 21<sup>st</sup> May, 2024. He submits that even the benefit of the order passed by the Hon'ble Supreme Court in Suo Moto case during the Covid-19 period is given effect to, the period of limitation expired on 1<sup>st</sup> October, 2022.
3. Mr. Mukherjee submits that the suit filed by the plaintiff is bad for mis-joinder of parties. He submits that as per the case of the plaintiff, they had lent and advanced money to the defendant no.1 and there is no privity of contract between the plaintiff and defendant no.2. He submits that the defendant no.2 is only a Director of the defendant no.1. The defendant no.1 is a separate legal entity and the plaintiff having entered into a transaction with the defendant no.1 and the defendant

no.2 is no way connected with the alleged transaction. In support of his submissions, he has relied upon the judgment in the case of ***Tristar Consultants vs. V. Customer Services India P. Ltd. and Anr.*** reported in ***AIR 2007 Del 157*** and submits that in a suit for recovery of money, only such persons can be impleaded as the defendant against whom averments are made which on proof would entitle the plaintiff to a decree whether jointly or severally or in the alternative against the said persons named as defendants.

4. Mr. Mukherjee submits that there is no cause of action for filing of suit arose as there is no default on the part of the defendant no.1. The plaintiff had the cheque dated 1<sup>st</sup> October, 2019 but has never presented the same for encashment and thus there is no cause of action arose for filing of the suit.
5. Mr. Mukherjee submits that the plaintiff has relied upon payment of TDS from the period from 3<sup>rd</sup> June, 2014 till 31<sup>st</sup> January, 2020 but the last TDS disclosed by the plaintiff is only for the financial year 2017-2018. He submits that the last balance confirmation is also of 31<sup>st</sup> March, 2019. The plaintiff has not disclosed any document to say that the time for payment of loan was extended from time to time. He submits that there is no mercantile document disclosed by the plaintiff to say the suit coming under the purview of Commercial Suit.
6. Mr. Mukherjee submits that in para 7 of the plaint, the plaintiff has claimed interest at the rate of 10% per annum and in paragraph 16, the

plaintiff has claimed interest at the rate of 24% per annum which is contradictory, thus no decree can be passed.

7. Mr. Mukherjee submits that the plaintiff has not lodged the writ of summons in accordance with law. He submits that the plaintiff has made several corrections in the plaint but the writ of summons was issued along with the uncorrected plaint and thus the writ of summons served upon the defendants cannot be treated as proper service of writ of summons. He submits that from the order dated 28<sup>th</sup> April, 2025, it is clear that the corrected copy of the plaint was served upon the defendant only on 28<sup>th</sup> April, 2025 in terms of the order passed by this Court.
8. Mr. Mukherjee submits that the defendant has a plausible defence to the instant suit and without deciding the issue raised by the defendant, the suit cannot be decided summarily. In support of his submissions, he has relied upon the judgment in the case of ***B.L. Kashyap and Sons Limited vs. JMS Steels and Power Corporation and Another*** reported in ***(2022) 3 SCC 294***.
9. Mr. Aniruddha Mitra, Learned Senior Advocate representing the plaintiff submits that the defendants have paid last interest to the plaintiff on 18<sup>th</sup> June, 2019, thus the cause of action for filing the case arose on 18<sup>th</sup> June, 2019. The plaintiff has to file suit for recovery of money on or before 17<sup>th</sup> June, 2022 but in the meantime from 15<sup>th</sup> March, 2020, the Government of India declared lock down. He submits

that from 18<sup>th</sup> June, 2019 to 14<sup>th</sup> March, 2020, the plaintiff has consumed 271 days. As per the order passed by the Hon'ble Supreme Court, limitation will start from 1<sup>st</sup> March, 2022 and the plaintiff has filed the suit on 21<sup>st</sup> May, 2024, as per details available in the Website of this Court, thus the plaintiff has consumed 812 days. The total period for filing suit is 1095 days but the plaintiff has filed the suit on 1083 days, thus the suit is within the period of limitation.

- 10.** Mr. Mitra submits that the plaintiff has disclosed the document i.e. letter issued by the plaintiff to the defendant no.1 dated 3<sup>rd</sup> June, 2014 informing that the plaintiff has transferred an amount of Rs. 30,00,000/- to the defendants by way of RTGS as short term loan for 120 days at the rate of 10% interest per annum and the defendants have issued a postdated cheque dated 1<sup>st</sup> October, 2014. The said document is not denied by the plaintiff and the same is the mercantile document.
- 11.** Mr. Mitra submits that inspite of issuance of postdated cheque, the defendants have not paid the said amount and again on 1<sup>st</sup> October, 2019, the defendant has issued another cheque for a sum of Rs.30,00,000/- but the plaintiff could not present the said cheque for encashment as the defendants informed that there is insufficient funds in the bank and the defendants are facing financial crunches. It cannot be said that the cheque dated 1<sup>st</sup> October, 2019, is for security. The security cheque issued by the defendant no. 1 is dated 1<sup>st</sup> October, 2014 appearing in the mercantile document.

- 12.** Mr. Mitra submits that the defendants have issued a cheque for Rs. 30,00,000/- dated 1<sup>st</sup> October, 2019 and the defendant has paid interest till 18<sup>th</sup> June, 2019 and thereafter the defendants have not paid any amount, thus it cannot be said that no cause of action arose for filing of the suit.
- 13.** Mr. Mitra submits that the as per negotiation between the plaintiff and the defendants, it was agreed that the defendant will pay interest at the rate of 10% per annum and the plaintiff has also claimed interest at the rate of 10% per annum at paragraph 15 of the plaint and has calculated the same at the rate of 10% but inadvertently in para 16, it is mentioned as interest at the rate of 24% per annum.
- 14.** Mr. Mitra submits that after filing of suit, the plaintiff has taken appropriate steps for lodging writ of summons and the same was duly issued by the Office of the Master and received by the defendants and on receipt of the same, the defendants entered appearance and has filed the present application without any objection. He submits that at the time of hearing, the defendants informed that the corrected plaint is not received by the defendants and by an order dated 28<sup>th</sup> April, 2025, this Court directed the plaintiff to serve the corrected copy of the plaint and the plaintiff has served the same on the same day. He submits that the defendants have received the copy of the plaint without any objection and thus the defendants cannot raise objection at the later stage.

15. Mr. Mitra submits that the plaintiff is not seriously objected for the delay of one day in filing of the present application by the defendants.
16. Mr. Mitra submits that the defence raised by the defendants raises no genuine triable issues and prays for rejection of this application and passing summary judgment.
17. The plaintiff has filed the present suit under Order XXXVII of the Code of Civil Procedure, 1908. Order XXXVII, Rule 2 and Rule 3 of the Code of Civil Procedure, 1908, reads as follows:

**“ORDER XXXVII  
SUMMARY PROCEDURE**

**[2. Institution of summary suits.—** (1) *A suit, to which this Order applies, may if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,—*

*(a) a specific averment to the effect that the suit is filed under this Order;*

*(b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and*

*(c) the following inscription, immediately below the number of the suit in the title of the suit, namely :—*

*“(Under Order XXXVII of the Code of Civil Procedure, 1908).”*

*(2) The summons of the suit shall be in Form No. 4 in Appendix B or in such other Form as may, from time to time, be prescribed.*

*(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be*

entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.]

**[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.

(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(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.*

*(6) At the hearing of such summons for judgment,—*

*(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or*

*(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.*

*(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.]”*

- 18.** The defendants have filed the present application on 11<sup>th</sup> day from the date of receipt of writ of summons and prayed for condoning delay of 1 (one) day. The plaintiff has not seriously objected for the said delay and this Court also finds that the defendants have sufficiently shown cause

as to why the defendants could not file the same within ten (10) days from the date of receipt of writ of summons, thus delay of one (1) day in filing of the present application is allowed.

- 19.** The defendants have raised objection that the summons of the suit is not served as per Form No. 4 in Appendix B as provided under Order XXXVII, Rule 2 (2) of the CPC. Form 4, Appendix B reads as follows:

**“[No. 4**  
**SUMMONS IN A SUMMARY SUIT**  
 (O. 37, r. 2)  
 (Title)

To

.....  
*[Name description and place of residence.]*

*WHEREAS..... has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for Rs.....and interest, you are hereby summoned to cause and appearance to be entered for you, within ten days from the service hereof, in default Whereof the plaintiff will be entitled, after the expiration of the said period of ten days, to obtain a decree for any sum not exceeding the sum of Rs.....and the sum of Rs.....for costs, together with such interest, if any, as the Court may order.*

*If you cause an appearance to be entered for you, ..... the plaintiff will thereafter server upon you a summons for judgment at the hearing of which you will be entitled to move the Court for leave to defend the suit.*

*Leave to defend may be obtained if you satisfy the Court by affidavit or otherwise that there is a defence to the suit on the merits or that it is reasonable that you should be allowed to defend.*

*Given under my hand and the seal of the  
Court, this ..... day of  
..... 20 .....*

*Judge.]*

- 20.** The defendants have not denied with respect to receipt of writ of summons. On receipt of writ of summons, the defendants have filed the present application with the prayer for condoning delay of 1 (one) day in filing of the present application. In the application also the defendants have not raised any objection that the plaintiff has not served writ of summons in terms of Order XXXVII, Rule 2(2) of the CPC. At the time of hearing of the suit, the defendants informed this Court that the plaintiff has made some corrections in the plaint but corrected plaint has not served upon the defendants. When the defendants have pointed out the same, this Court directed the plaintiff to serve corrected copy of the plaint and on the same day i.e. 28<sup>th</sup> April, 2025, the plaintiff has served the corrected copy of the plaint to the defendants and the defendants have received the same without any objection.
- 21.** This Court finds that the plaintiff has taken appropriate steps for issuance of writ of summons upon the defendants and the defendants have received writ of summons and has filed the present application. The corrected plaint is served upon the defendants by the plaintiff as per order of this Court and the defendants have accepted the same without any objection. It is not the case that the plaintiff has not lodged the writ of summons. The only question raised that the said summons not in accordance with Form No. 4 but this Court finds that the

defendants have received the writ of summons and have entered appearance without any objection and filed the present application and in the present application also the defendants have not raised any objection with regard to issuance of writ of summons not in accordance with Form-4, thus this Court did not find any merit on the objection raised by the defendants.

- 22.** The plaintiff has disclosed a letter dated 3<sup>rd</sup> June, 2014, issued by the plaintiff to the defendants informing that an amount of Rs. 30,00,000/- is transferred by way of RTGS to the defendant no.1 as short term loan for 120 days at the rate of 10% per annum and the postdated cheque dated 1<sup>st</sup> October, 2014, is also reflected in the said letter. In the said letter, the seal and signature of defendants is also appearing and the defendants have not denied with regard to the said letter. The defendants have taken plea that the cheque relied by the plaintiff is for security and the plaintiff has not presented the cheque for encashment thus no cause of action arose. The cheque issued by the defendants to the plaintiff for security is dated 1<sup>st</sup> October, 2014 but the cheque relied by the defendants is dated 1<sup>st</sup> October, 2019. The plaintiff in paragraph 11 of the plaint, has categorically stated that the cheque could not be presented as per the request made by the defendants that there was no sufficient fund in the said account and the defendants have not denied or filed any contrary document to show that the cheque was issued for security or at the relevant point of time there was sufficient funds in the bank account.

- 23.** The plaintiff has disclosed ledger account wherein it reveals that on 18<sup>th</sup> June, 2019, the defendants have paid interest of Rs. 63,173/- to the plaintiff. From TDS Certificate also it reveals that interest have been paid for the year 2014-2015, 2015-2016, 2016-2017, 2017-2018 and 2018-2019.
- 24.** The plaintiff has also disclosed conformation of accounts signed by the plaintiff and the defendants from 2014 to 2018 wherein the defendants have admitted loan amount of Rs. 30,00,000/- and payment of interest.
- 25.** The plaintiff has paid an amount of Rs. 30,00,000/- to the defendant no.1 on 3<sup>rd</sup> June, 2014. The defendants have issued postdated cheque of Rs. 30,00,000/- as 1<sup>st</sup> October, 2014 and the defendants have paid last interest to the plaintiff on 18<sup>th</sup> June, 2019. The last cause of action arose on 1<sup>st</sup> October, 2019 when the defendants have issued further cheque. If the contention of the defendants, is taken into consideration that the cheque dated 1<sup>st</sup> October, 2019 was not presented for encashment and thus no cause of action arose but if cause of action is taken from 18<sup>th</sup> June, 2019 i.e. last date of payment of interest, the plaintiff supposed to file suit 18<sup>th</sup> June, 2022 but in the meantime due to pandemic Covid-19, lock down was declared from 15<sup>th</sup> March, 2020. The Hon'ble Supreme Court in **SUO MOTU WRIT PETITION (C) NO. 3 OF 2020** dated **10<sup>th</sup> January, 2022** has passed the following order:

***“5. III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all***

*persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”*

In view of the order passed by the Hon’ble Supreme Court, the limitation period of filing the suit is to be counted as follows:

- i. The plaintiff has exhausted 271 days from 18<sup>th</sup> June, 2019 to 14<sup>th</sup> March, 2020 i.e. before the lock down is declared.*
- ii. In between 1<sup>st</sup> March, 2022 to 25<sup>th</sup> September, 2023, the plaintiff has exhausted 574 days.*
- iii. 26<sup>th</sup> September, 2023 to 29<sup>th</sup> November, 2023, the plaintiff has exhausted 65 days in pre-institution mediation process.*
- iv. 30<sup>th</sup> November, 2023 to 20<sup>th</sup> May, 2024, the plaintiff has exhausted 173 days.*

The plaintiff has exhausted total  $271+574+65+173= 1083$  days out of total 1095 days, out of 1083 days, 65 days was exhausted in pre-institution mediation, thus the suit filed by the plaintiff is within the period of limitation.

- 26.** The defendants have filed the present application praying for leave to defend the suit but the defendants have not made out any defence with regard to the payment of the amount of Rs. 30,00,000/- by the plaintiff to the defendant no. 1. On the other hand, the document disclosed by

the plaintiff reveals that it is admitted that on 3<sup>rd</sup> June, 2014, the plaintiff has transferred an amount of Rs. 30,00,000/- by way of RTGS to the defendant no. 1 as short term loan for 120 days along with interest @ 10%. The defendants have issued a postdated cheque dated 1<sup>st</sup> October, 2014 but subsequently, the defendants had again issued a cheque on 1<sup>st</sup> October, 2019. The plaintiff has also disclosed the confirmation of accounts from 1<sup>st</sup> April, 2014 to 31<sup>st</sup> March, 2018 wherein the defendants had admitted the claim of the plaintiff. The ledger account also reveals that the last interest of Rs. 63,173/- was paid by the defendants to the plaintiff on 18<sup>th</sup> June, 2019. From TDS Certificate, it reveals that from the year 2014-2019, TDS was deducted continuously.

**27.** In the case of ***B.L. Kashyap & Sons Ltd. (supra)***, the Hon'ble Supreme Court relied upon the judgment in the case of ***IDBI Trusteeship*** reported in **(2017) 1 SCC 568** held that:

**“32.2) 17.** Accordingly, the principles stated in para 8 of *Mechelec* case will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in *Milkhiram* case, as follows:

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

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

is ordinarily entitled to unconditional leave to defend.

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

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

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

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

- 28.** As regard to the defendant no. 2, this Court finds that the defendant no. 2 has been arrayed by name and not as Director of the defendant no. 1 company. Though in paragraph 3, the plaintiff has described the defendant no. 2 as one of the Director but there is no averment made in

the plaint that the defendant no. 2 was ever involved in the transaction between the plaintiff and the defendant no. 2.

- 29.** This Court finds that though the plaintiff has made the defendant no. 2 as a party but no decree can be passed against the defendant no. 2.
- 30.** Considering the above circumstances, this Court finds that the defendant has not raised any substantial defence or genuine triable issues and the issues which the defendant has raised in the present application is frivolous and vexatious and on the other hand, the defendant no. 1 has admitted the claim of the plaintiff, thus no leave can be granted to the defendant to defend the suit and the plaintiff is entitled the judgment.
- 31.** In view of the above, the defendant no. 1 is directed to pay a sum of Rs. 30,00,000/- being the principal amount along with interest @ Rs. 10% per annum from 19<sup>th</sup> June, 2019 till the realization of the total decretal amount.
- 32. GA (Com) No. 2 of 2024 is dismissed. CS (Com) No. 697 of 2024 is disposed of.** Decree be drawn accordingly.

**(Krishna Rao, J.)**