



Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.241/2025
WITH
CIVIL APPLICATION NO.35/2025
IN
WRIT PETITION NO.241/2025**

FERDINAND HERCULANO
ARAUJO

... PETITIONER

Versus

NARINDER PUNJ

... RESPONDENT

Mr Gustavo Monteiro, Advocate for the Petitioner.
Mr J. B. Passi, Advocate for the Respondent.

CORAM: VALMIKI MENEZES, J.

DATED: 3rd JULY 2025

ORAL ORDER :

1. By this petition the order of 05.05.2025 passed by the Court of the Civil Judge, Junior Division at Panaji in Summary Suit No.98/2023/F has been impugned. By the impugned order the Civil Court has granted the petitioner leave to defend the Summary Suit on condition that the petitioner deposits 50% of the amount claimed under an agreement dated 15.09.2022 which constitutes Rs.5,00,000/-.

2. Mr Gustavo Monteiro, learned advocate for the petitioner submits that the Trial Court has concluded, based upon the

defence set out by the petitioner that there is a triable issue raised in the defence, and has accordingly granted leave on the aforementioned condition.

3. It is the submission of the learned advocate for the petitioner that the Supreme Court in *B.L. Kashyap And Sons Ltd. vs M/s JMS Steels And Power Corporation - (2022) 1 SCR 1022* has categorized the defences that may be considered, and the conditions that can be imposed by the Trial Court whilst granting leave to defend in a Summary Suit. It is the submission that based upon the defence taken by the petitioner, the Trial Court ought to have granted leave to defend categorizing the defence as one being of substantial nature and likely to succeed, and thus ought not to have imposed the condition of furnishing security by way of deposit.

4. I have perused the order of the Trial Court which has concluded in paragraphs 5 and 6 thereof that the defence raised by the petitioner raises a triable issue. The Trial Court has however not followed the law as laid down by the Supreme Court in the aforementioned judgment and in its earlier judgment in *IDBI Trusteeship Services Ltd. vs Hubtown Ltd. – (2017) 1 SCC 568*.

5. In *IDBI Trusteeship Services Ltd. (supra)*, the Supreme Court has considered the manner in which the Court, in a Summary Suit, should consider the question of granting leave to defend, and has made the following observations:

"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para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P) Ltd.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 possible 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."

6. Considering the defence raised in the present matter, the proof of such defence would necessarily have to be by oral evidence. This is a case where the petitioner has received a notice under Section 138 and has replied to the same only seeking a

copy of the agreement but has not raised any specific defence in the reply. In the application for leave to defend, there is no denial of the execution of an agreement nor is there any denial of the execution of the twenty cheques. The defence set out is one which pleads fraud, however it does not plead action taken by the petitioner on gaining knowledge of the fraud played on him by the respondent.

7. Considering this defence, in my opinion the questions raised in the application for leave to defend would be a triable issue but would fall in the category covered by paragraph 17.3 of *IDBI Trusteeship Services Ltd. (supra)*. Thus, though the issue is triable, there is some doubt left as to whether the defence is genuine or would have reasonable chance of succeeding considering that the execution of agreement has not been denied and its contents would be covered by Section 91 of the Evidence Act/Section 94 of Bharatiya Sakshya Adhiniyam 2023.

8. Since in my opinion the defence raised would fall under the parameters laid down by the Supreme Court in paragraph 17.3 of *IDBI Trusteeship Services Ltd. (supra)*, the Trial Court has correctly imposed a condition on the petitioner/original defendant for deposit of 50% of the amount claimed which is Rs.5,00,000/-. The order therefore does not call for any interference in the light of the observations made herein.

9. The petitioner submitted that the time-frame for deposit of the amount under the impugned order was two months from the date of the order. However, since the order was challenged before

this Court, some period has been spent in this challenge, and hence seeks a direction of this Court to extend the timelines set out in the impugned order.

This in my opinion would not be a proper course to be followed by a Writ Court, as it would be otherwise open to the petitioner to apply for such extension by citing valid reasons for the same, before the Trial Court, which may consider the applications and pass appropriate orders thereon.

10. With these observations the petition is dismissed. No cost.

11. In view of the dismissal of the petition nothing survives in the Civil Application No.35/2025 and the same is also disposed of.

VALMIKI MENEZES, J.