



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4624 OF 2025**

Rani Liyakat Ankleshwaria ... Petitioner
versus
Malik Lakhani ... Respondent

Mr. Rahul Gupta i/by Mr. Amir Arsiwala, for Petitioner.
Ms. Akshata Katara i/by Asahi Legal for Respondent.

CORAM: N.J.JAMADAR, J.

DATE : 8 APRIL 2025

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally.
2. The challenge in this Petition is to an order dated 11 July 2024 passed by the learned Judge, City Civil Court, Bombay, in Summons for Judgment No.34 of 2024, whereby the learned Judge was persuaded to grant leave to defend the suit on the condition of deposit of Rs.2 Lakhs within a period of one month from the date of said order.
3. The Respondent – Plaintiff had known the husband of the Defendant. In the year 2019, at the request of the husband of the Defendant, the Respondent claimed to have advanced friendly loan of Rs.2 Lakhs to the husband of the Defendant. The latter had promised to repay the said amount and also pay royalty of Rs.7,500/- per month for six months till 21 July 2019

and, thereafter, refund the said amount of Rs.2 Lakhs. The husband of the Defendant has allegedly issued a receipt / acknowledgment, Exhibit A appended to the plaint acknowledging receipt of Rs.2 Lakhs as and by way of personal loan and the liability to pay Rs.7,500/- per month by way of providing royalty for a period of six months. It was further recorded that the husband of the Defendant had issued post dated cheques by way of security.

4. The husband of the Defendant passed away. The Plaintiff claimed to have learnt about the death of the husband of the Defendant in the month of July 2022 and called upon the Defendant to refund the said amount. As the Defendant refused to refund the said amount, the Respondent instituted a Summary Suit based on the said receipt/acknowledgment.

5. The Defendant sought unconditional leave to defend the suit. It was, inter alia, contended that she was completely unaware of the transaction between the Plaintiff and her husband. She had not known the Plaintiff. The Plaintiff and his associates had barged into her house and falsely claimed that her husband had borrowed money from the Plaintiff and passed the receipt / acknowledgment (Exh.A). The receipt / acknowledgment (Exh. A) was a false and fabricated document.

6. By the impugned order, the learned Judge, City Civil Court, was persuaded to grant leave to defend the suit subject to the deposit of the principal amount of Rs.2 Lakhs. Thus, the Defendant has invoked the writ

jurisdiction.

7. I have heard the learned Counsel for the parties.

8. Learned Counsel for the Petitioner submitted that there is not an iota of material to show that the Plaintiff had advanced money to the husband of the Defendant. The Defendant has raised substantive defence that the receipt / acknowledgment (Exh.A) does not bear the signature of the husband of the Defendant and it was not issued by the husband of the Defendant. In the absence of any material to show that there was an acknowledgment of liability by the Defendant, she could not have been saddled with the condition of deposit of the principal amount. It was further submitted that there is no material to show that the Defendant has inherited the estate from her husband and she is, therefore, liable to discharge the said liability.

9. In opposition to this, learned Counsel for the Respondent would urge that there is material to show that the amount was credited to the account of the deceased husband of the Defendant. Attention of the Court was invited to a statement of account which indicates that a sum of Rs.2 Lakhs was credited to the account of the husband of the Defendant, on 21 January 2019. As the Defendant had inherited the property from her husband, she is liable to pay the debt of her late husband, urged learned Counsel for the Respondent.

10. Learned Judge, City Civil Court proceeded on the premise that there was an acknowledgment of liability. Thus, placing reliance on the decision of

the Supreme Court in the case of IDBI Trusteeship Services Ltd. V/s. Hubtown Ltd.¹, the learned Judge granted leave to defend subject to the deposit of the amount of Rs.2 Lakhs.

11. The position as regards the leave to defend summary suit is fairly crystalized. If the Defendant succeeds in making out a substantial defence, unconditional leave to defend is required to be granted. If the Defendant succeeds in demonstrating that there are triable issues, indicating fair, bonafide or reasonable defence, ordinarily the Court ought to grant unconditional leave to defend the suit. Where the Court entertains doubt about the genuineness of the defence or the bonafides of the defence raised by the Defendant, the Court can grant conditional leave to defend the suit and the condition can be in respect of time for trial as well as deposit of the amount. Where the Court finds that the defences raised by Defendant are plausible yet improbable, the Court can grant conditional leave to defend the suit on the condition of payment into Court. It is only in those cases, where the defences raised by the Defendant appear to be frivolous, vexatious, sham or moonshine, leave to defend can be refused.

12. A useful reference in this context can be made to a decision of the Supreme Court in the case of B.L.Kashyap and Sons Ltd. V/s. JMS Steels and Power Corporation and Anr.² in which after adverting to the

1 (2017) 1 SCC 568

2 (2022) 3 SCC 294

pronouncement in the case of IDBI Trusteeship Services Ltd. (supra), the Supreme Court encapsulated the principles which govern the grant of leave to defend, 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 bonafide 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 appear 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."

13. In the case at hand, it is imperative to note that the transaction was purportedly between the Plaintiff and the husband of the Defendant. The transaction was in the nature of a personal loan extended by the Plaintiff to the husband of the Defendant. The suit is based on the receipt / acknowledgment (Exh. A) purportedly issued by the husband of the Defendant.

14. Prima facie, it appears that there was no privity of contract between the Plaintiff and the Defendant. The liability is sought to be fastened on the Defendant on the ground that she had inherited the estate of her husband. That essentially is a matter for adjudication at the trial. Whether the Defendant had inherited the estate from her late husband, whether the estate left behind by her deceased husband was sufficient to discharge the liability, cannot be matters of presumption.

15. Secondly, in the affidavit seeking leave to defend, the Defendant has raised defences regarding the genuineness of the receipt / acknowledgment (Exh.A) and the very transaction between the Plaintiff and her deceased husband. The learned Judge, City Civil Court was of the view that the Defendant has not brought material on record to show that the transaction was different from the one pleaded in the plaint. Even if the Court proceeds on the said premise, yet, in the peculiar facts of the case, since the liability of the Defendant would be commensurating with the estate to which the

Defendant succeeded upon the death of her husband, it was a case where the learned Judge ought to have granted unconditional leave to defend the suit.

16. In the facts of the case and having regard to the circumstances in which the Defendant finds herself, after the demise of her husband, the order of deposit of principal amount of Rs.2 Lakhs operates onerously. I am, therefore, inclined to allow the Petition and set aside the impugned order and grant unconditional leave to the Defendant to defend the suit.

17. Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The impugned order to the extent it grants conditional leave to defend the suit upon deposit of a sum of Rs.2 Lakhs stands quashed and set aside.
- (iii) Unconditional leave to defend the suit is granted to the Defendant.
- (iv) The Defendant shall file Written Statement within a period of one month from today.
- (v) Trial in the suit stands expedited.

(N.J.JAMADAR, J.)