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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 16908 OF 2024

Ravindra Ranagappa Asadkar

...Petitioner

Versus

Rajesh Harischandra Kamble

...Respondent

Mr. Harshad Sathe, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATE: 7TH JANUARY 2025

ORDER:-

1. The Petitioner-Defendant assails the legality, propriety and correctness of an order passed by the learned Civil Judge, Senior Division, Kalyan in summary suit No. 78 of 2022, whereby the learned Civil Judge declined to grant leave to defend the summary suit.

2. A summary suit came to instituted on the strength of two cheques drawn for Rs. 5 lakhs each by the Defendant on the Federal Bank Limited, payable on 7th July 2021 towards the repayment of the amount of Rs. 10 lakhs which was advanced by the Plaintiff to the Defendant. It was, *inter alia*, averred that in the month of May 2019, the Defendant was in financial need and requested for monetary help to the Plaintiff. Believing the representations, the Plaintiff had paid an amount of Rs. 10 lakhs to the Defendant. Towards repayment of the said amount, the

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Defendant had drawn the cheques which were dishonored on presentment. Despite service of the demand notice, the Defendant committed default in repayment. Hence, the Suit.

3. Upon service of summons, the Defendant appeared and sought leave to defend. It was, *inter alia*, contended that the Plaintiff had advanced a sum of Rs. 2 lakhs only and by taking undue advantage of the financial mess in which the Defendant found himself, obtained eight signed cheques, including the subject cheques, fraudulently. The Plaintiff and his wife had allegedly asked the Defendant and his wife to execute a Leave and License Agreement by way of security. Later they insisted for execution of Deed of Mortgage. Eventually on 10th March 2019, the Plaintiff and his wife got Sale Deeds of the properties, which stood in the name of the wife of the Defendant, executed in favour of the wife of the Plaintiff, without disclosing the contents and character of those documents. After realizing the fraud, on 16th August 2022, the wife of the Defendant has addressed a notice to cancel those registered instruments. In the meanwhile, the Defendant had repaid the sum of Rs. 2 lakhs, in cash, which was the only amount advanced by the Plaintiff to the Defendant.

4. The learned Civil Judge was of the view that the aforesaid defence of the Defendant was a creature of an afterthought. The registered instruments were executed in the year 2019. The Defendant

did not raise any dispute about the said documents till the year 2022. The said transactions were between the wife of the Plaintiff and wife of the Defendant, and Defendant's wife was at liberty to pursue her remedies.

5. Mr. Harsahd Sathe, the learned Counsel for the Petitioner, submitted that the learned Civil Judge did not properly appreciate the nature of the defence put-forth by the Defendant. By no stretch of imagination it could be said that the defence was completely frivolous and vexatious. The Defendant has raised, at least, a triable defence. The learned Civil Judge thus could not have shut the defence of the Defendant by denying the leave to defend.

6. Mr. Sathe placed reliance on the decision of the Supreme Court in the case of **B.L. Kashyap And Sons Ltd Vs M/s JMS Steels and Power Corporation & Anr** wherein after adverting to the earlier pronouncement in the case of **IDBI Trusteeship Services Ltd Vs Hubtown Ltd**,¹ the principles which govern the grant of leave to defend a Suit instituted under Order XXXVII of the Code, were enunciated as under:

“33. It is once clear that even though in IDBI Trusteeship, this Court has observed that the principles stated in para 8 of Mechelec Engineers case shall stand superseded in the wake of amendment of Rule 3 of Order 37 but, on the core theme, the principles remain the same that grant of leave to defend (with or without conditions) is the ordinary rule; and

¹ (2022) 3 SCC 294.

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 give out even a semblance of triable issues before the Court.

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 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.”

7. The Supreme Court has emphasized that grant of leave to defend (with or without conditions) is the ordinary Rule; and denial of leave to defend is an exception. It is only in the case where the Defendant is found to have no substantial defence or failed to raise any genuine triable issue, 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.

8. Whether the case in hand is of such a nature? Upon perusal of the Application seeking leave to defend, it becomes evident that the fact that the Defendant had approached the Plaintiff for financial assistance is not put in contest. Delivery of the cheques as such, is also not much in dispute. The Defendant has, however, endeavored to contend that as against an advance of Rs. 2 lakhs only, the Plaintiff initially asked the Defendant's wife to execute a Leave and License Agreement, by promising to pay Rs. 8 lakhs to tide over the financial crisis, and later on, the Plaintiff insisted for execution of a mortgage and, eventually, under the pretext of execution of a Deed of Mortgage, fraudulently got the Sale Deed of the property of Defendant's wife executed in favour of the wife of the Plaintiff, on 1st March 2019. Those Sale Deeds are false and bogus. In addition, the Defendant asserts, the said amount of Rs. 2

lakhs was also returned to the Plaintiff. Yet, despite repeated demands, the Plaintiff did not return the cheques.

9. The aforesaid defence of the Defendant appears moonshine. It does not appeal to human credulity that against an advance of Rs. 2 lakhs only, the Defendant and his wife could have agreed to execute registered instruments in respect of two immovable properties and would have also maintained stoic silence for over three years. Even the Defendant did not initiate any action for the alleged withholding of as many as eight cheques by the Plaintiff.

10. Considered in this backdrop, the view of the learned Civil Judge that the defence is a creature of an afterthought, cannot be said to be unjustifiable.

11. In substance, the Defendant failed to raise any substantial defence or even a genuine triable issue. Thus, no fault can be found with the impugned order.

12. Hence the following order.

- (i) The Petition stands dismissed.
- (ii) No costs.

[N. J. JAMADAR, J.]