

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 18893 OF 2024

Jade Traders Private Ltd
A Company incorporated
under the provisions of companies
Act 1956, having its registered office
address at Unit No. 6, Ground floor,
Kamath Industrial Estate, Opp. Siddhi
Vinayak Temple, Mumbai 400 025
and also having office at
Ginger House, Raghuvanshi Mills
Compound, Senapati Bapat Marg,
Lower Parel, Mumbai 400 013.

..Petitioner

Versus

Credence Analytics (India) Pvt Ltd
A company incorporated under
the provisions of companies
Act 1956, having its registered office
address at 604, 6th floor, B Wing,
Eureka Tower, Mindscape, Off Link Road,
Malad West, Mumbai 400 064.

...Respondent

Mr. Dinesh Jain, with Anurag Katarki, for the Petitioner.
Mr. Shreyas Lele, with Dhiraj Mhetre and Ms. Vaidehi, i/b Khaitan
Legal Associates, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 23rd APRIL 2025

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RAMCHANDRA
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ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of
the learned Counsel for the parties, heard finally.

2. The challenge in this Petition is to an order dated 19th October 2024 passed by the learned Judge, City Civil Court, Mazgaon, Greater Mumbai, whereby the Petitioner has been granted leave to defend the Suit subject to deposit of a sum of Rs. 60,90,000/- within a period of 60 days from the date of said order.

3. The Respondent instituted a Summary Suit for recovery of the amount of security deposit paid under the Leave and Licence Agreement executed on 23rd May 2017, asserting that the Defendant committed default in repayment of the amount of security deposit after the expiry of the term of licence and delivery of possession of the licenced premises, despite repeated demands.

4. The Defendant sought leave to defend the Suit unconditionally contending, *inter alia*, that the Plaintiff was liable to pay an amount of Rs. 31,60,955/- to the Defendant as during the currency of the Leave and Licence Agreement, the Plaintiff had paid licence fee at a discounted rate on the condition that the Plaintiff would continue to occupy the licenced premises beyond the initial term of the licence. Secondly, though the Leave and Licence Agreement records that a sum of Rs. 60,90,000/- was deposited by way of security deposit, yet, in fact, only a sum of Rs. 52,50,000/- was deposited. The Plaintiff had acknowledged the said fact in the communications exchanged between

the parties. However, those communications were suppressed while instituting the Suit.

5. By the impugned order, the learned Judge, City Civil Court was persuaded to grant conditional leave to defend the Suit observing, *inter alia*, that it was incontestable that the Defendant had received a sum of Rs.52,50,000/- and the Defendant had not refunded the amount of security deposit. Thus the leave to defend was required to be granted on the condition of deposit of an amount of Rs.60,90,000/- as the Leave and Licence Agreement recorded that the said amount was paid by way of security deposit.

6. Mr. Jain, the learned Counsel for the Petitioner, submitted that the Plaintiff has instituted the Suit by suppressing material facts. Attention of the Court was invited to the communication addressed on behalf of the Plaintiff on 29th October 2022, wherein the Plaintiff had claimed refund of Rs. 30,80,973/- only, after accounting for the discounted amount of the licence fee to the tune of Rs. 35,13,358/-. Attention of the Court was also invited to the reply thereto, which was addressed on behalf of the Defendant, claiming a sum of Rs. 84,10,955/- to be due and payable by the Plaintiff. It was further submitted that even before the institution of the Suit the Defendant had addressed a letter demanding the said amount from the Plaintiff.

7. The Defendant is entitled to recover more amount from the Plaintiff and, therefore, in the Affidavit seeking leave to defend, the Defendant had sought leave to file a counter-claim as well. In these circumstances, when triable issues were raised, the Trial Court ought to have granted unconditional leave to defend the Suit.

8. In opposition to this, Mr. Lele the learned Counsel for the Plaintiff submitted that it is indisputable that the security deposit had not been refunded, despite repeated demands. In view of a clear and explicit admission in the Leave and Licence Agreement that a sum of Rs. 60,90,000/- was paid by way of security deposit, the learned Judge, City Civil Court was fully justified in directing the Defendant to deposit the said amount.

9. The learned Counsel further submitted that the amount of Rs. 52,50,000/- was already with the Defendant when the parties entered into the Leave and Licence Agreement. In addition, the Plaintiff had incurred expenses for making the licenced premises habitable and compatible with the requirements of the Plaintiff and, therefore, a sum of Rs. 60,90,000/- was acknowledged to have been received by way of security deposit in the Leave and Licence Agreement.

10. I have given careful consideration to the submissions canvassed across the bar. It is well neigh settled, a suit for refund of the security deposit is maintainable as a Summary Suit. There is no dispute over the

fact that the licence came to an end and the Defendant has not refunded the security deposit. The parties are at issue over the amount which was actually paid by way of security deposit, and whether the Defendant is entitled to deduct the amount out of the security deposit towards the dues which the Defendant claims the Plaintiff owes to it.

11. In the backdrop of this nature of the dispute, the communications exchanged between the parties throw light on the transaction between the parties. It is not put in contest that the Plaintiff had paid the licence fee at a discounted rate during the currency of the licence, particularly during the Covid 19 pandemic. The communication dated 29th October 2022, addressed on behalf of the Plaintiff records the fact that a sum of Rs. 35,13,358/- was the aggregate amount of licence fees which was not paid on account of the discounted rate at which the Plaintiff had paid the licence fees. In the backdrop of this communication, whether the Trial Court was justified in imposing the condition of deposit of the entire amount of the security deposit, warrants consideration.

12. The legal position as regards the grant of leave to defend the Suit is well-settled. If the Defendant raises a substantial defence, the Defendant is entitled to an unconditional leave. Where the Defendant raises a triable issue premised on a fair and reasonable defence, ordinarily, the Defendant is entitled to an unconditional leave. However, where the Court entertains doubt about the *bona fide* or

genuineness of the defence and the defence appears improbable, conditional leave to defend the Suit can be granted. Conditions may pertain to time or mode of trial or deposit of the amount. Leave to defend is to be denied only in such cases where the defendant has practically no defence and is unable to come up with a semblance of triable issue before the Court. Even if there remains a reasonable doubt about the probability of defence, sterner conditions could be imposed while granting leave but refusal to grant leave to defend would be justified only in such cases where the defendant fails to show any genuine triable issue and, conversely, the defence appears frivolous or vexatious.

13. A useful reference can be made to the decision of the Supreme Court in the case of *B. L. Kashyap and Sons Ltd. vs. M/s. JMS Steels and Power Corporation and Another*¹, wherein the tests to grant the leave to defend a summary suit, were reiterated as under:

“33. It is at once clear that even though in the case of IDBI Trusteeship, this Court has observed that the principles stated in paragraph 8 of Mechelec Engineers’ case shall stand superseded in the wake of amendment of Rule 3 of Order XXXVII 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 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.

¹ (2022) 3 SCC 294.

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.”

14. Ordinarily, where triable issues are raised, the Defendant is entitled to an unconditional leave. However, when the Defendant acknowledges the liability, even if triable issues are raised, leave cannot be granted unless the Defendant either deposits or secure the said amount. A profitable reference in this context can be made to a decision of the Supreme Court in the case of *IDBI Trusteeship Services Limited vs. Hubtown Limited*,² Especially the proposition no. 17.6, which reads as under:

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.”

(emphasis supplied)

² (2017) 1 SCC 568.

15. Applying these principles to the facts of the case at hand, even if the case of the Defendant is taken at par that the amount of difference between the agreed licence fees and discounted rate at which the licence fees was paid is to be recovered from the Plaintiff, since the receipt of security deposit is acknowledged, the Defendant can be granted conditional leave to defend the Suit. In view of the communication dated 29th October 2022, it may be appropriate to direct the Defendant to deposit a sum of Rs. 30,00,000/-.

16. I am, therefore, inclined to partly allow the Petition.

17. Hence the following order:

: O R D E R :

- (i) The Petition stands partly allowed.
- (ii) The impugned order stands modified to the extent that, instead of Rs. 60,90,000/-, the Defendant shall deposit a sum of Rs. 30,00,000/- within a period of eight weeks from today.
- (iii) In the event of deposit of the said amount, the Defendant shall file a Written Statement within a period of 30 days of deposit of the said amount.
- (iv) It is hereby made clear that the Defendant is entitled to take all the defences which are available in law.

- (v) Rule is made absolute to the aforesaid extent
- (vi) Petition disposed.
- (vii) No costs.

[N. J. JAMADAR, J.]