IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.17 OF 2024
IN
SUMMARY SUIT NO.24 OF 2023

NANDKUMAR KHIARAM KALATI AND OTHERS)...PLAINTIFFS

V/s.

ATLANTIC APPARELS AND OTHERS)...DEFENDANTS

Mr.Haresh Jagtiani, Senior Advocate a/w Ms.Vandana Mehta, Mr.Pushpvijay Kanoji i/b Ms.Vandana Mehta, Advocates for the Plaintiffs.
Mr.Haridas Dave i/b Mr.N.P. Rajwani, Advocate for the Defendants No.1 to 3.

CORAM : ABHAY AHUJA, J.
RESERVED ON : 30th APRIL, 2025
PRONOUNCED ON : 9th JUNE, 2025

ORDER. :

1. This Summons for Judgment had been heard on the 12th February, 2025 as well as on the 30th April, 2025. Thereafter this Court had closed the matter for orders granting liberty to file written submissions. Written submissions have been filed by the Plaintiffs on 8th May, 2025 and by the Defendants on 13th May, 2025.

2. The present summary suit is filed seeking recovery of amounts purportedly advanced by the Plaintiffs to the Defendants along with interest at the rate of 15% p.a. from the date of filing of the Suit till the date of realisation of payment.

3. Plaintiffs No. 1 to 9 are stated to be members of the Kalati Family. Plaintiff Nos. 10, 11 and 12 are stated to be entities owned and controlled by the Kalati Family.

4. It has been submitted that Plaintiff No. 1 passed away on 2nd July, 2024, pending the hearing of the present suit and the said fact has been brought on record by way of an amendment to the plaint.

5. That the Defendant No. 1 is a partnership firm wherein Defendants No. 2 and 3 are partners of the said firm. Defendant No. 3 is the son of Defendant No. 2.

6. It has been submitted on behalf of the Plaintiff that the Plaintiff No. 1 and Defendant No. 2 were close acquaintances since the 1980s and their acquaintance grew over time resulting in development of

trust and familial relations between the Kalati Family and Defendants No. 2 and 3.

7. It has been submitted that owing to this relation and trust, the Defendant No. 2 sought financial assistance from Plaintiff No. 1 on various occasions for a short period of time which would be regularly repaid along with interest.

8. That in or around 2011, Defendant No. 2 approached Plaintiff No. 1 for substantial funds for business development. That based on past transactions done between the parties, the Plaintiff No. 1 agreed to lend further amounts at the rate of 15% interest p.a.

9. That a total of Rs. 8,92,00,000/- (Rupees Eight Crore Ninety-Two Lakhs Only) was advanced to the Defendants by the Plaintiffs in various tranches between the year 2010 to 2014 as per the request of the Defendants through various cheques as under highlighting the said transaction being done in favour of Atlantic Apparels i.e., Defendant No. 1 :

TABLE INDICATING MONIES ADVANCED BY PLAINTIFFS				
Plaintiff No.1 (Nandkumar Khiaram Kalati)				
Date	Particulars	Cheque No.	Amount Paid	Exh No.
1-Dec-2010	Nandkumar Kalati IDBI Bank A/c No. 748104000000602	000388	1,000,000	C1
1-Dec-2010	Nandkumar Kalati IDBI Bank A/c No. 748104000000602	000383	1,000,000	C1
1-Dec-2010	Nandkumar Kalati IDBI Bank A/c No. 748104000000602	000384	1,000,000	C1
1-Dec-2010	Nandkumar Kalati IDBI Bank A/c No. 748104000000602	000385	1,000,000	C1
1-Dec-2010	Nandkumar Kalati IDBI Bank A/c No. 748104000000602	000387	1,000,000	C1
1-Dec-2010	Nandkumar Kalati IDBI Bank A/c No. 748104000000602	000386	1,000,000	C1
6-Feb-2010	Nandkumar Kalati Saraswat Bank Co-op Bank Ltd A/c No. 012500100004794	813041	500,000	C1
6-Mar-2010	Nandkumar Kalati Saraswat Bank Co-op Bank Ltd A/c No. 012500100004794	813045	500,000	C1
9-Feb-2011	Nandkumar Kalati IDBI Bank A/c No. 748104000000602	022026	1,000,000	C1
9-Feb-2011	Nandkumar Kalati IDBI Bank A/c No. 748104000000602	022027	1,000,000	C1
9-Feb-2011	Nandkumar Kalati IDBI Bank A/c No. 748104000000602	022029	1,000,000	C1
9-Feb-2011	Nandkumar Kalati IDBI Bank A/c No.	022030	500,000	C1

	748104000000602			
16-Mar-2011	Nandkumar Kalati IDBI Bank A/c No. 748104000000602	022038	1,000,000	C1
16-Mar-2011	Nandkumar Kalati IDBI Bank A/c No. 748104000000602	022039	1,000,000	C1
17-Mar-2011	Nandkumar Kalati IDBI Bank A/c No. 748104000000602	022042	1,000,000	C1
17-Mar-2011	Nandkumar Kalati IDBI Bank A/c No. 748104000000602	022040	1,000,000	C1
17-Mar-2011	Nandkumar Kalati IDBI Bank A/c No. 748104000000602	022041	1,000,000	C1
25-Jul-2011	Nandkumar Kalati Oriental Bank of Commerce A/c No. 10532010005690	949116	1,000,000	C1
20-Dec-2013	Nandkumar Kalati Oriental Bank of Commerce A/c No. 10532010005690	981102	1,000,000	C1
1-Dec-2010	Nandkumar Kalati IDBI Bank A/c No. 748104000000602	000388	500,000	C1
A	**TOTAL**		**1,70,00,000**	
Plaintiff No.2 Prem Kalati				
Date	Particulars	Cheque No.	Amount Paid	Exh No.
7-Jan-2009	Prem Kalati Union Bank of India A/c No. 408102010007414	016786	500,000	C2
7-Jan-2009	Prem Kalati Union Bank of India A/c No. 408102010007414	016785	500,000	C2
1-Jun-2011	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	947683	1,000,000	C2
1-Jun-	Prem Kalati Oriental	947682	1,000,000	C2

2011	Bank of Commerce A/c No. 10532010007670			
9-Jun-2011	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	947685	1,000,000	C2
9-Jun-2011	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	947686	1,000,000	C2
9-Jun-2011	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	947687	500,000	C2
10-Jun-2011	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	947688	500,000	C2
10-Jun-2011	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	947689	1,000,000	C2
10-Jun-2011	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	947690	1,000,000	C2
25-Jul-2011	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	949006	500,000	C2
25-Jul-2011	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	949002	1,000,000	C2
25-Jul-2011	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	949003	1,000,000	C2
25-Jul-2011	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	949004	1,000,000	C2
25-Jul-	Prem Kalati Oriental	949005	1,000,000	C2

2011	Bank of Commerce A/c No. 10532010007670			
29-Jul-2011	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	949009	1,000,000	C2
7-Feb-2012	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	955673	1,000,000	C2
7-Feb-2012	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	955675	1,000,000	C2
7-Feb-2012	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	955674	1,000,000	C2
8-Feb-2012	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	955676	1,000,000	C2
8-Feb-2012	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	955677	1,000,000	C2
9-Feb-2012	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	956121	1,000,000	C2
19-May-2012	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	959854	1,000,000	C2
19-May-2012	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	959853	1,000,000	C2
21-Jul-2012	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	962491	1,000,000	C2

21-Jul-2012	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	962492	1,000,000	C2
3-Aug-2012	Prem Kalati Oriental IDBI Bank A/c No. 748104000000675	015347	1,000,000	C2
3-Aug-2012	Prem Kalati Oriental IDBI Bank A/c No. 748104000000675	015346	1,000,000	C2
10-Aug-2012	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	962632	500,000	C2
5-Dec-2012	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	966063	1,000,000	C2
14-Dec-2012	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	966064	1,000,000	C2
14-Dec-2012	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	966065	1,000,000	C2
21-Mar-2013	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	976991	1,000,000	C2
21-Mar-2013	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	976992	500,000	C2
14-May-2013	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	446009	500,000	C2
3-Jun-2013	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	981485	500,000	C2
15-July-2013	Prem Kalati Oriental Bank of Commerce	000083	1,000,000	C2

	A/c No. 10532010007670			
10-Aug-2013	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	001677	500,000	C2
19-Nov-2013	Prem Kalati Oriental Bank of Commerce A/c No. 10532010007670	004500	500,000	C2
B	TOTAL		3,35,00,000	
	Plaintiff No.3 Lalit Kalati			
Date	Particulars	Cheque No.	Amount Paid	Exh No.
9-Feb-2011	Lalit Kalati IDBI Bank A/c No. 748104000001557	005803	1,000,000	C3
9-Feb-2011	Lalit Kalati IDBI Bank A/c No. 748104000001557	005805	500,000	C3
10-Feb-2011	Lalit Kalati IDBI Bank A/c No. 748104000001557	005804	1,000,000	C3
1-Jun-2011	Lalit Kalati IDBI Bank A/c No. 748104000001557	008502	1,000,000	C3
2-Jun-2011	Lalit Kalati IDBI Bank A/c No. 748104000001557	008503	500,000	C3
6-Jul-2011	Lalit Kalati IDBI Bank A/c No. 748104000001557	009419	1,000,000	C3
6-Jul-2011	Lalit Kalati IDBI Bank A/c No. 748104000001557	009418	1,000,000	C3
6-Jul-2011	Lalit Kalati IDBI Bank A/c No. 748104000001557	009420	500,000	C3
25-Jul-2011	Lalit Kalati IDBI Bank A/c No. 748104000001557	009428	1,000,000	C3

7-Feb-2012	Lalit Kalati IDBI Bank A/c No. 748104000001557	002964	1,000,000	C3
7-Feb-2012	Lalit Kalati Yes Bank A/c No. 016390700000839	141185	500,000	C3
7-Feb-2012	Lalit Kalati Yes Bank A/c No. 016390700000839	141184	1,000,000	C3
28-Apr-2012	Lalit Kalati Yes Bank A/c No. 016390700000839	172069	1,000,000	C3
28-Apr-2012	Lalit Kalati Yes Bank A/c No. 016390700000839	172070	1,000,000	C3
28-Apr-2012	Lalit Kalati Yes Bank A/c No. 016390700000839	172071	500,000	C3
21-May-2012	Lalit Kalati Saraswat Bank co-op Bank Ltd A/c No. 012203100001873	018721	500,000	C3
26-May-2012	Lalit Kalati Yes Bank A/c No. 016390700000839	180326	500,000	C3
23-Jun-2012	Lalit Kalati Yes Bank A/c No. 016390700000839	180336	500,000	C3
20-Jul-2012	Lalit Kalati Yes Bank A/c No. 016390700000839	273218	500,000	C3
10-Aug-2012	Lalit Kalati Yes Bank A/c No. 016390700000839	929044	500,000	C3
31-Aug-2012	Lalit Kalati Yes Bank A/c No. 016390700000839	929051	500,000	C3
27-Oct-2012	Lalit Kalati Yes Bank A/c No. 016390700000839	471144	1,000,000	C3
12-Apr-2013	Lalit Kalati Yes Bank A/c No. 016390700000839	157207	500,000	C3

16-Apr-2013	Lalit Kalati Oriental Bank of commerce Bank A/c No. 10532010014190	969088	500,000	C3
14-May-2013	Lalit Kalati Oriental Bank of commerce Bank A/c No. 10532010014190	969091	500,000	C3
6-Jun-2013	Lalit Kalati Yes Bank A/c No. 016390700000839	426156	500,000	C3
14-Jun-2013	Lalit Kalati Yes Bank A/c No. 016390700000839	426160	500,000	C3
13-Jul-2013	Lalit Kalati Yes Bank A/c No. 016390700000839	426170	500,000	C3
10-Aug-2013	Lalit Kalati Yes Bank A/c No. 016390700000839	261059	500,000	C3
18-Sept-2013	Lalit Kalati Yes Bank A/c No. 016390700000839	261070	500,000	C3
19-Sept-2013	Lalit Kalati Yes Bank A/c No. 016390700000839	261072	500,000	C3
C	TOTAL		2,10,00,000	
Plaintiff No.4 Karuna Kalati				
Date	Particulars	Cheque No.	Amount Paid	Exh No.
21-May-2012	Karuna Kalati Saraswat Bank Co-operative Bank Ltd A/c No. 012203100001874	18731	1,000,000	C4
14-Dec-2012	Karuna Kalati Oriental Bank of commerce A/c No. 10532010005680	954159	1,000,000	C4
12-Apr-2013	Karuna Kalati Oriental Bank of commerce A/c No. 10532010005680	961940	1,000,000	C4

D	TOTAL		30,00,000	
Plaintiff No.5 Divya Kalati				
Date	Particulars	Cheque No.	Amount Paid	Exh No.
7-Feb-2012	Divya Kalati Union Bank of India A/c No. 408102010007584	916009	500,000	C5
28-Mar-2013	Divya Kalati Union Bank of India A/c No. 408102010007584	916014	1,000,000	C5
E	TOTAL		15,00,000	
Plaintiff No.6 Rishabh Kalati				
Date	Particulars	Cheque No.	Amount Paid	Exh No.
1-Jun-2011	Rishabh Kalati Oriental Bank of Commerce A/c No. 10532011000528	947347	500,000	C6
21-May-2012	Rishabh Kalati Saraswat Co-operative Bank Ltd A/c No. 012203100001884	018831	1,000,000	C6
5-Dec-2012	Rishabh Kalati Oriental Bank of Commerce A/c No. 10532011000528	976584	500,000	C6
23-Oct-2013	Rishabh Kalati Oriental Bank of Commerce A/c No. 10532011000528	001625	500,000	C6
F	TOTAL		30,00,000	
Plaintiff No.7 Krishnee Kalati				
Date	Particulars	Cheque No.	Amount Paid	Exh No.
21-May-2012	Krishnee Kalati Saraswat Bank co-operative Bank A/c No. 012203100001885	18841	1,000,000	C7
14-Dec-2012	Krishnee Kalati Oriental Bank of	960059	500,000	C7

	commerce A/c No. 10532010005700			
G	TOTAL		15,00,000	
Plaintiff No.8 Hridhay Kalati				
Date	Particulars	Cheque No.	Amount Paid	Exh No.
31-Mar-2011	Hridhay Kalati Oriental Bank of Commerce A/c No. 10532091000202		200,000	-
H	TOTAL		2,00,000	
Plaintiff No.9 Gunjan Kalati				
Date	Particulars	Cheque No.	Amount Paid	Exh No.
7-Feb-2012	Gunjan Kalati Union Bank of India A/c No. 40810210007585	071943	500,000.00	C9
I	TOTAL		5,00,000	
Plaintiff No.10 Kalati Constructions Pvt. Ltd				
Date	Particulars	Cheque No.	Amount Paid	Exh No.
3-Jun-2013	Kalati Constructions Union Bank of India A/c No. 408101010036666	426102	1000,000	C10
14-Oct-2013	Kalati Constructions Union Bank of India A/c No. 408101010036666	426112	1000,000	C10
12-Nov-2013	Kalati Constructions Saraswat Bank co-operative Bank Ltd A/c No. 0125001405209	495601	1000,000	C10
12-Dec-2013	Kalati Constructions Saraswat Bank co-operative Bank Ltd A/c No. 0125001405209	495602	1000,000	C10
J	TOTAL		40,00,000	
Plaintiff No.11 L.Nandkumar & Co.				
Date	Particulars	Cheque No.	Amount Paid	Exh No.

9-Feb-2011	L.Nandkumar & Co. Union Bank of India A/c No. 408101010022037	160570	1000,000	C11
9-Feb-2011	L.Nandkumar & Co. Union Bank of India A/c No. 408101010022037	160571	1000,000	C11
K	TOTAL		20,00,000	
Plaintiff No.12 K.P. Enterprises				
Date	Particulars	Cheque No.	Amount Paid	Exh No.
7-Sept-2013	K.P. Enterprises Union Bank of India A/c No. 408101010021079	388149	1000,000	C12
7-Sept-2013	K.P. Enterprises Union Bank of India A/c No. 408101010021079	388150	1000,000	C12
L	TOTAL		20,00,000	
Total of Columns (A to L) being principal amount due and owing to the Plaintiffs			**8,92,00,000**	

TABLE INDICATING MONIES RECEIVED TOWARDS PRINCIPAL REPAYMENT			
Date	Particulars	Cheq. No.	Amount Received
4-Feb-2014	Prem Kalati Oriental Bank of Commerce A/c. No.10532100007670	RTGS	3,500,000.00
	TOTAL		**3,500,000.00**

10. It has been submitted that out of the Rs. 8,92,00,000/- advanced, the Defendants have repaid an amount of Rs. 35,00,000/- (Rupees Thirty-Five Lakhs Only) towards the principal amount and that as a result, the present claim of the Plaintiffs is as under :

a. recovery of an amount of Rs. 8,57,00,000/- being total outstanding principal amount;

b. recovery of an amount of Rs. 9,68,86,250/- (Rupees Nine Crores Sixty-Eight Lakhs Eighty-Six Thousand Two Hundred and Fifty Only) towards interest at the rate of 15% p.a. till 30th April 2023;

c. recovery of further interest at the rate of 15% p.a. from the date of filing of the suit i.e., 4th May 2023, till realization:

11. Mr.Haresh Jagtiani, learned Senior Counsel for the Plaintiffs submits that in order to substantiate their claim, the Plaintiffs have annexed bank statements of individual Plaintiff to highlight each transaction by which the monies were advanced to the Atlantic Apparels i.e. Defendant No 1 and that the Defendants have not denied that monies were advanced to them and neither have they denied the statements annexed to corroborate the same.

12. It is submitted that the Defendant No. 2 on behalf of Defendant No. 1 has acknowledged the principal amounts due towards Plaintiffs nos. 1,2,3,4,6,7 and 12 by accepting, confirming and endorsing balance confirmation statements dated 1st April 2014 and 1st April 2015 and

draws this Court's attention to Exhibit D1 to D7 and Exhibit E1 to E7 of the Plaint.

13. Mr.Jagtiani, would further submit that the Defendants have acknowledged their liability by way of various correspondence between both the parties. Mr. Jagtiani, submits that in a letter dated 18th August 2016 the Defendants also promised to repay part of principal amount being Rs. 1 Crore by 30th September 2016 and also assured that balance funds would be arranged by 30th March 2017. It is pertinent to note that at no stage have the Defendants denied their liability to the extent of the amount as claimed by the Plaintiffs. Mr.Jagtiani, submits that the Defendants have admitted their liability as above in the correspondence and agreed to revalidate the post-dated cheques and refers to Exhibit F of the Plaint.

14. Mr.Jagtiani, submits that email dated 12th October 2016 and 26th April 2020 also highlight the Defendants giving evasive responses and seeking more time to arrange the funds for repayment. This Court's attention is drawn to Exhibit G and Exhibit H of the Plaint.

15. It is submitted that the Defendant No. 2 vide email dated 28th April 2020 also acknowledged Plaintiff No. 2's email dated 27th April 2020 wherein Plaintiff No. 2 had mentioned the principal amount of Rs. 8.57 Crores as due and also tabled details of cheques that the Defendants had given to the Plaintiffs for repayment. Further in the email dated 27th April 2020, the Plaintiff No. 2 had also asked for replacement of the cheques tabled in the email. Mr.Jagtiani, refers to Exhibit I of the Plaint in support.

16. Referring to Exhibit J of the Plaint, Mr.Jagtiani submits that in addition to the above evidence, the Defendants had issued 25 cheques dated 28th June 2020 towards repayment of principal amount along with interest.

17. It is submitted on behalf of the Plaintiffs that all the ingredients of Order XXXVII Rule 2 of the Code of Civil Procedure, 1908 ("CPC") essential to maintain a Summary Suit have been satisfied by the Plaintiffs and that therefore the Plaintiffs are entitled to a decree as prayed for.

18. It is submitted that the written contract is in the nature of undisputed cheques all dated 28th June, 2020 to the tune of Rs.14,29,50,000/- issued by the Defendant No.1 in favour of each of the Plaintiffs. That the Plaintiffs have proved that a written contract subsisted between the Plaintiffs and the Defendants so as to make the case eligible for summary disposal.

19. It has also been submitted that, it is not necessary for the Plaintiff to present the cheque for clearance so as to create a cause of action in their favour and the mere issuance of the cheques suffices for the purpose of Order XXXVII.

20. It is further submitted that for the purposes of limitation, the relevant date is the date of issuance of the cheque, which is 28th June, 2020 in this case. The Suit was filed on 4th May, 2023 which is well within the period of 3 years as prescribed in the Limitation Act, 1963.

21. It is submitted that therefore no triable issue has been made out by the Defendants to prevent this Court from passing a decree.

22. On the other hand, the Defendants have filed their application for leave to defend.

23. Mr.Haridas Dave, learned Counsel submitted that in support of the present summons for judgement as well as in the plaint of the present summary suit, the plaintiffs have not annexed any *prima facie* documentary evidence to prove the advancing of alleged friendly loans by the plaintiff to the defendants.

24. Mr.Dave submits that in commercial field huge loans cannot be advanced based upon friendly relationship and having lent thus cannot be allowed to remain unpaid for long period. This stand of the Plaintiffs is without merit and without any legal basis. Further it is hard to believe that such friendly loans were advanced given a long-standing relationship between the Plaintiffs but were subjected to the rate of interest which was more than normal rate of interest being charged on loans given for commercial purposes. As far as allegation of the Plaintiffs of being "emotionally trapped" is concerned, the Defendants feel it appropriate not to enter into arguments with the plaintiffs and furnish the details of commercial transaction done by the plaintiff with the persons introduced by the Defendants.

25. It is submitted that, moreover photo copies have been annexed to the plaint and/or summons for judgement are not supported by the certificate as required under Section 65-B of the Evidence Act, 1872. Relying upon photo copies of the various documents as documents evidencing alleged advancing and disbursing of the loans is not permissible in general and in allowing the present summons for judgement in particular.

26. It is further submitted that the Plaintiffs have not approached this Court in a clean and fair manner. That the Plaintiffs have firstly tried to circumvent the provisions of Payment of Court Fees by clubbing all the cause of actions together and paying total court fees of Rs.3.00 lacs for entire claim of Rs.18,25,86,250/- (Rupees Eighteen Crores Twenty-Five Lakhs Eighty-Six Thousand Two Hundred and Fifty Only) and secondly clubbing of individual claims in order to invoke the monetary jurisdiction of this Hon'ble Court. That the mala fide act of paying lesser court fees on the part of the plaintiffs was caught and detected by the Registry by registering its objection for the same. It is submitted that instead of complying and removing the objection by paying the requisite court fees, the plaintiff preferred a praecipe dated 30th August, 2023, the suit was circulated as the Registry had raised

certain objections and one of the objections raised was in respect of separate Court fees for separate claim in respect of each plaintiff was to be paid. That the argument of the plaintiffs that under Article 1 to the Schedule I of the Court Fees Act the maximum court fees that could be leviable on any plaint or memorandum of appeal would be Rs.3.00 lacs, was not accepted by this Court and this Court stated that the plaintiffs cannot by filing one suit, avoid paying court fees that they would be liable to pay in the event they had filed separate suit. That the Court further stated thut this is not a case where the court fees can be capped at Rs.3.00 lac. which the plaintiffs had paid at the time of institution of the suit and the Plaintiffs were therefore required to pay the balance court fees within a period of four weeks.

27. It has been submitted that thus the mala fide attempt of the plaintiffs in circumventing the provisions of Court Fees Act was frustrated by the Hon'ble Court.

28. However, the Plaintiffs still continued its mala fide attempt of clubbing separate cause of actions into one cause of action and filed the present suit seeking independent decrees by the Plaintiffs corresponding to their respective amounts as claimed by the Plaintiffs

and that therefore the Court directed that each of the Plaintiffs has to pay separate maximum amount of court fees as if the Plaintiffs have filed an independent separate suit based upon cause of action. Although the Plaintiffs paid the court fees corresponding to their claim, but continued to pursue and file the present suit clubbing all the separate and independent causes of action with a view to invoke the monetary jurisdiction of this Hon'ble Court, the actual jurisdiction to entertain and adjudicate the claims of the plaintiffs is the City Civil Court and not this Court.

29. It has been submitted that there is no right to relief arising out of same act, transaction or series of transactions and no common question of law or fact arises out of the present suit. Every plaintiff has averred that they have independently provided loans on different dates and as such every plaintiff has to prove independently their cause of action and their claims. There is no common question of law or fact involved in the present suit.

30. Without prejudice it is submitted that even if it is presumed that the Defendants treated Plaintiffs as one unit, still each Plaintiff has to prove their claims independently against the Defendants, as no Plaintiff

has annexed any power of attorney/board resolution in favor of one entity/person to extend loans on their behalf and file recovery suit on their behalf. Further Defendant No.2's letter dated 18 August, 2016 is already refuted and denied, is of no help as the contents do not acknowledge any liability and it is totally wrong to treat NK Kalati & Family as one unit.

31. It is further submitted that the claim of the Plaintiffs that a total sum of Rs.8,92,00,000/- (Rupees eight crore ninety two lakhs only) was advanced to the defendants in various tranches between 2010 to 2014 allegedly at the request of the defendants is not supported by any documentary evidence. Such huge sums of money could not be advanced merely at the request which is not supported by any documentary evidence. That there is no specific and categorical written document requesting for the loans by the Defendants. Merely annexing statements of account and claiming that the monies were lent to the Defendants are not sufficient to fasten liability on the Defendants. The Plaintiffs are required to bring in strict proof in support of their claims. Moreover it is never heard that known acquaintances are given huge sums of monies without any documentary evidence.

32. Further it is claimed that out of the Rs. 8,92,00,000/- advanced, the Defendants have repaid an amount of Rs.35,00,000/- (Rupees Thirty-Five Lakhs Only) towards principal amount. It is submitted that, here too, there is no specific and categorical letter from the Defendants that a sum of Rs.35,00,000/- is being paid to be appropriated towards principal amount of a specific plaintiff.

33. Mr.Dave submits that the Plaintiffs have claimed an amount of Rs. 8,57,00,000/- (Rupees eight crore fifty seven lacs only) being the total outstanding principal amount as well as an amount of Rs. 9,68,86,250/-(Rupees Nine Crores Sixty-Eight Lakhs Eighty-Six Thousand Two Hundred and Fifty Only) being outstanding towards interest at the rate of 15% p.a. till 30th April 2023 along with future interest @15% p.a., from 4th May, 2023 till actual realization.

34. It is submitted on behalf of the Defendants that the claim of interest @15% per annum is not based upon any documentary evidence as nowhere in the plaint or summons for judgement the Defendants have agreed to pay such high rate of interest of 15% per annum. In fact the claim of interest @15% per annum is totally out of tune and at complete variance vis-à-vis the current rate of interest

prevalent in the financial market. Hence the claim made by the plaintiff is totally unwarranted and not accepted by the Defendants.

35. It is submitted that Order VII, Rule 2A of CPC applies to all suits where interest is claimed in any Suit. It is further submitted that it has to be stated specifically if the interest claimed is with respect to a commercial transaction falling under Section 34 of CPC or under terms of contract or any other Act, in which case the Act needs to be specified in the plaint.

36. It is submitted that in order to substantiate their claim the Plaintiffs have annexed bank statements of individual Plaintiff to highlight each transaction by which the monies were advanced to the Atlantic Apparels i.e. Defendant No.1. It is submitted that the Defendants have not denied that monies were advanced to them and neither have they denied the statements annexed to corroborate the same. Mr.Dave, Learned Counsel submits that the Defendants deny the contents and as per para 13 of the application for leave to defend, it is submitted that the Defendant No. 2 was not a partner as on 1 April 2014 and furthermore, the balance confirmation has no evidentiary value as it has not been countersigned nor bears signature over revenue

stamp or no written confirmation is annexed to the same along with certificate under Section 65-B of the Indian Evidence Act, 1872 for computer generated letters. Further contents of paragraphs 3, 4 and 5 i.e. emails annexed to the plaint cannot be taken into evidence as these are not supported with certificate under Section 65-B of Indian Evidence Act, 1872.

37. Further, it is submitted that no document has been brought on record by the Plaintiffs that the Defendant Nos. 2 and 3 were partners as on date of claims/filing of present suit to show the suit is maintainable against them. In reply to the advocate's notice, the Advocate of the Defendants clearly stated in Paragraphs (vii) and (viii), Page 183, of Plaint that Defendant No. 3 is not a partner from 1st April 2015. Further in leave to defend, it is clearly stated in paragraph 13, the names of the partners in the partnership firm from time to time and as per the alleged dates of balance confirmation given in favour of the Plaintiffs neither Defendant No. 2 nor Defendant No. 3 were partners and hence are not liable.

38. Mr.Dave, learned Counsel for the Defendants would submit that it is wrong to say that the defendants have acknowledged their liability by way of various correspondence between both the parties and that if

the contents of the letter dated 18th August 2016 are scrutinized carefully, nowhere the Defendants promised to repay part of principal amount being Rs.1.00 crore (Rupees one crore only) by 30th September 2016 or assured that balance funds would be arranged by 30th March 2017. This cannot be an admission and confirmation of the liability as these letters do not indicate and/or give exact liability which the defendants were obligated to pay the alleged dues.

39. That it is wrong on the part of the plaintiffs to take evasive responses and seeking more time to be confirmation of the liability and moreover these emails are not verified and supported with certificate under section 65-B of the Evidence Act, 1872.

40. Mr.Dave submits that the Defendants once again reiterate that the plaintiffs have not established that the alleged cheques have been issued in lieu of repayment of time barred debts and hence the said cheques cannot be made basis for the written contract to pay time barred debts and thus fall within the exception of Section 25(3) of the Indian Contract Act, 1872. In fact the Plaintiffs have failed to ensure compliance of Section 25(3) of the Indian Contract Act, 1872. The suit is filed beyond three years and hence the same is time barred. Mr.Dave,

learned Counsel for the Defendants would submit that in terms of Section 25(3) of Indian Contract Act, 1872 revival of time barred debt requires a specific and categorical procedure to be adopted. The first requirement is that a specific and categorical letter should be addressed by borrower to the lender stating therein that the borrower is ready to pay time barred debt and for the said purpose a cheque is being issued. Mere issuance of cheques without any specific and categorical letter do not establish liability and revive the time barred debt. That it is common in business parlance that the cheques can be issued for umpteen purposes and unless cogent and specific supporting evidence is provided along with the cheque, there cannot be presumption of liability on the defendants in general and mere particularly for revival of time barred debt. Mr.Dave, submits that it is wrong to say that the Defendants had issued 25 cheques dated 28th June, 2020 towards repayment of principal amount along with interest.

41. Mr.Dave submits that it is the case of the Plaintiffs in their plaint and particulars of claim that they have lent money from 2009 to 2013 i.e. prior to enforcement of Maharashtra Money Lending (Regulation) Act, 2014 and the case would fall within the exception of Section 2(13) (l) of Maharashtra Money Lending (Regulation) Act, 2014. It is

submitted that in the present case as per the Plaintiff's own averments, the alleged loans advanced had elements of system, continuity and repetition and as such the Plaintiffs would squarely fall into the provisions of the Bombay Lenders Act, 1946 and that the Defendants should be granted unconditional leave to defend.

42. The Defendants have therefore submitted that the Summons for Judgment should not be made absolute and dismissed with costs and since triable issues have been raised by the Defendants and/or unconditional leave to defend should be granted.

43. Mr.Jagtiani, learned Senior Counsel has sought to rejoind to the submissions made on behalf of the Defendants as under.

44. Under Order 1 Rule 1 CPC read with Order 2 Rule 3, multiple persons can be joined as plaintiffs if their right to any relief arises from the same act, transaction, or series of transactions and if a common question of law or fact would arise if they filed separate suits.

45. Further Defendant No. 2 sent a letter dated 18th August 2016 addressed to N. K. Kalati & Family assuring to arrange Rs. 1 Crore by

30th September, 2016, thereby highlighting the Defendants referring to the Plaintiffs as one unit and monies owing to the Plaintiffs as forming one set of transactions.

46. Furthermore, vide Email dated 12th October 2016 Defendant No. 2 wrote to Plaintiff No. 2 requesting to not deposit the cheques. This goes to highlight that the Defendants were communicating with members of Kalati family with respect to the advanced amount.

47. With respect to the denial by the Defendants deny issuance of any cheque for the purpose of repayment, Mr.Jagtiani has submitted that the said defence is inconsistent and belied by the stand taken in paragraph 18 of the Leave to Defend where the Defendants whilst not denying the issuance of cheques as pleaded by the plaintiffs, contend that the cheques were issued against different members of the family, and the Plaintiffs have mis-joined the Plaintiffs to avoid court fee.

48. As regards the defence of the Defendants denying taking any loan from the Plaintiffs, Mr.Jagtiani has submitted as under :

a. The Defendants in paragraph 9 of Leave to Defend submit that all past transactions had been cleared by the Defendant and therefore there is no outstanding due.

b. The Defendants contend in paragraph 13 and 14 of Leave to Defend that the debt is time-barred.

c. The Defendants in paragraph 25 and 26 of Leave to Defend admit the balance confirmation statement of the year 2014 and then say that the debt is time barred.

d. Thus their defence of denying availing of any loan is belied by instances a, b and above.

49. As regards the defence of non compliance of the provisions of Order VII Rule 2A of the CPC, Mr.Jagtiani submits that :

a. The said provision would only apply to Commercial suits and the present suit is not filed as a Commercial Suit.

b. However, paragraph 5 of the plaint records that the loans were advanced as friendly loans to the Defendants considering the long-standing relationship.

50. As regards the defence that Kartikeya Talreja, Defendant No. 3 no longer being a partner of the Defendant No. 1 Firm since April 2015, it is submitted by Mr.Jagtiani that :

a. No document has been brought on record to substantiate the claim as the burden to do so is clearly on the Defendants and remains undischarged.

b. Reply to Plaintiff's Advocate notice dated 21st October, 2022, records Mr. Basant Talreja, Defendant No. 2 and Mr. Kartikeya Talreja Defendant No. 3 as partners of M/s. Atlantic Apparels, thereby rendering their defence as palpably false.

c. Para 3 of Leave to Defend records that Defendant No. 2 and Defendant No. 3 are partners of Defendant No. 1.

51. As regards the defence that the monies have been advanced in violation of section 32B of Bombay Money Lending Act, 1946, Mr.Jagtiani submits that :

a. This stand is not taken and omitted from Leave to defend.

b. The monies advanced were on the basis of long-standing relationship between the Plaintiffs and the Defendants and the monies were not lent for commercial purpose.

c. Further, the Defendants allege that the Plaintiffs "emotionally trapped" the Defendants into doing business. This submission must be rejected for the mere stating and is absurd to the say the least and would test the credulity of any prudent person.

d. The Defendants also allege that they assisted the Plaintiffs in obtaining clients for money lending business however not a single instance has been disclosed where the Plaintiffs have lent money to any entity introduced to the Plaintiffs by the Defendants.

52. As regards the Defendants' case that the Suit is not based on written contract and not maintainable as a summary suit the Plaintiffs have submitted that the Plaintiffs claim is based on the cheques undisputedly issued by the Defendant no.1 to each of the Plaintiffs towards repayment of the principal amount lent by the Plaintiffs to the Defendants and interest accrued thereon, it is the Plaintiff's case that these cheques amount to a fresh written contract under section 25(3) of the Indian Contract Act, 1872. That there is not even a whisper by the Defendants to suggest that the cheques were not issued towards repayment as claimed by the Plaintiffs but towards some other transaction.Mr.Jagtiani submits that the Plaintiff's claim is maintainable on cheques issued even though the cheques are not presented.

53. As regards the issue of requirement of money lending license, it has been submitted on behalf of the Plaintiffs that the Defendants have not disputed the familial relations between the Defendant No.2 and the Plaintiff No.1 and have in fact admitted in their Application for leave to defend that the Defendant No.2 was well acquainted and had been interacting with the Plaintiff since 1980. Further, though the Defendants contend that the Plaintiffs were in the business of money lending and gave loans to other entities as well, such stand is not supported by any evidence.

54. I have heard the learned Senior Counsel for the Plaintiffs as well as the learned Counsel for the Defendants and considered the rival contentions.

55. As regards the issue with respect to the payment of court fees is concerned, that in my view, has already been decided by an order of this Court dated 5th October, 2023, followed by the dismissal of the Review Petition against the said order by order dated 17th January, 2024, after which the Plaintiffs have made payment of the requisite court fees. The said order has therefore been sustained in pursuance thereof. An endeavour to reagitate the same is in my view not tenable and is hereby rejected.

56. Also therefore the allegations with respect to the attempt to circumvent the provisions of the Court Fees Act do not deserve to be dealt with again.

57. The Defendants have submitted that all the past transactions as alleged had been cleared by the Defendants and therefore, there is no outstanding although there does not appear to be denial for the present transactions in respect of which the cheques were issued. The fact that cheques to the tune of Rs.14,29,50,000/- have been issued by Defendant No.1 in favour of each of the Plaintiffs has not been denied by any cogent evidence. It is also observed that by email dated 12th October, 2016 written by Defendant No.2 to Plaintiff No.2 a request was made not to deposit cheques.

58. However, clubbing of separate causes of action into one cause of action and seeking independent decrees is something that requires consideration. It is true that each claim will have to be proved separately by the respective Plaintiff and that although a common question of law may arise, however, whether a common question of fact arises would have to be an issue that would need to be framed after filing of written statements as admittedly, loans have been provided on different dates and would have to be proved independently.

59. Therefore, the issue regarding clubbing of causes of action misjoinder of parties and the jurisdiction of this Court thereupon would also require consideration.

60. Even the issue with regard to the authority given by all the Plaintiffs to Plaintiff No.1 who has also passed away on 2nd July, 2024 during the pendency would be required to be considered on the basis of supporting evidence, even though there is a communication dated 18th August, 2016 from the Defendant No.2 which has been denied by the Defendants treating the Plaintiffs as one unit.

61. The Defendants have also raised an issue with respect to the rate of interest submitting that the rate of 15% per annum is not based on any documentary evidence as nowhere in the Plaint or in the Summons for Judgment the Defendants have agree to pay such high rate of interest and that the same is even contrary to the current/prevalent rate of interest as well as provisions of law. I am of the view that this issue would also require consideration.

62. The issue of the certificate under Section 65-B of the Indian Evidence Act, 1872 would arise only at the stage of trial and this Court does not deem it appropriate to comment on it at this stage.

63. As noted above, the Defendants have raised triable issues which would need to be considered at a trial after the filing of the written statement(s) and consideration of evidence, although it cannot be denied that the Plaintiffs and the Defendants, *prima facie,* appear to have had transactions of advancing monies to the Defendants by way of cheques and it has not been denied that the Defendants had issued cheques to the Plaintiffs, although not deposited by the Plaintiffs.

64. Accordingly, in view of the decisions of the Hon'ble Supreme Court in the case of ***IDBI Trusteeship Services Ltd Vs.Hubtown Ltd***[1]***,*** as well as in the case of ***BL Kashyap and Sons Ltd Vs. M/s. JMS Steels and Power Corporation and Anr***[2]*,* I am inclined to grant conditional leave to the Defendants. Accordingly, the following order is passed :-

O R D E R

(i) Leave to defend the present suit is granted to the Defendants subject to their depositing a sum of Rs.8,57,00,000/- (Rupees Eight Crore Fifty Seven Lacs Only) within a period of four weeks from the date of uploading of this order.

(ii) If the aforesaid deposit is made within the stipulated period, this suit shall be transferred to the list of Commercial Causes and the

1 MANU/SC/1490/2016
2 (2022) 3 SCC 294

Defendants shall file written statement(s) within a period of four weeks from the date of deposit.

(iii) If this conditional order of deposit is not complied with within the aforesaid period, the Plaintiffs shall be entitled to apply for an *ex-parte decree* against the Defendants after obtaining a Non-deposit Certificate from the Prothonotary and Senior Master of this Court.

(iv) Summons for Judgment stands disposed in the aforesaid terms.

(ABHAY AHUJA, J.)