



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4500 OF 2025

1. Jalandhar Dharmaji Gaikwad, Proprietor of M/s Uma Traders, Aged about 79 yrs, Occ: Business, R/o M.S.E.B. Colony, New Subhedar Layout, Near Mother India Convent, Opp. MSEB Colony Ground, Nagpur – 400 024.
2. M/s Uma Traders, Through its Proprietor Jalandhar Dharmaji Gaikwad, having shop at Plot No.5, Dhangawli Nagar, Opp: Dhage Banglow, Pipla Road, Nagpur – 400 034.

PETITIONERS

VERSUS

M/s Rajlaxmi Steel Traders through Vinay Shivratan Dalmia, Aged about 56 yrs, Occ: Business, the Karta of the Proprietor of Vinay Dalmia (HUF), Having shop/ Off at Agnihotri Compound, Opp: Union Bank of India, Ghat Road, Nagpur – 440 018.

RESPONDENT

Shri Shantanu M. Pande, counsel for the petitioners.
Shri S.K. Agrawal and Palakh S. Agrawal, counsel for the respondent.

WITH

WRIT PETITION NO. 7662 OF 2025

M/s Rajlaxmi Steel Traders through Vinay Shivratan Dalmia, Aged about 56 yrs, Occ: Business, the Karta of the Proprietor Vinay Dalmia (HUF), Having shop/ Office at Agnihotri Compound, Opp: Union Bank of India, Ghat Road, Nagpur – 440 018.

PETITIONER

VERSUS

1. Jalandhar Dharmaji Gaikwad, Proprietor of M/s Uma Traders, Aged major, Occ: Business, having R/o Plot no.49, M.S.E.B. Colony, New Subhedar Layout, Near Mother India Convent, Opp. MSEB Colony Ground, Nagpur – 440 024.
2. M/s Uma Traders, Through its Proprietor Jalandhar Dharmaji Gaikwad, having shop/office at Plot No.5, Dhangawli Nagar, Opp: Dhage Bunglow, Pipla Road, Nagpur – 400 034.

RESPONDENTS

Shri S.K. Agrawal, counsel for the petitioner.
Shri Shantanu M. Pande, counsel for the respondents.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : DECEMBER 09, 2025

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. The petitioners in both the petitions have challenged the same order dated 17.07.2025 passed by the trial Court granting conditional leave to defend in favour of the defendant no.1. Since the challenge raised is to the same order arising out of the same civil suit, the petitions are being decided by this common judgment.

3. The parties are hereinafter referred to according to their status in the civil suit. The petitioners in Writ Petition No.4500 of 2025 are the original defendants who have filed the petition challenging the imposition of condition of deposit of Rupees Three Lakhs for grant of leave to defend, whereas the petitioner in Writ Petition No.7662 of 2025, who is original plaintiff has challenged the same order and sought for rejection of leave to defend or alternatively direction to the defendants to deposit the admitted amount of Rs.21,77,778/- as a condition precedent for the leave to defend.

4. Controversy in the matter arises out of Summary Civil Suit no.771 of 2024 seeking recovery of Rs.31,99,004/- alongwith interest on the basis of alleged transactions about supply of various items of building material. In response to the notice, the defendants appeared and filed an application for leave to defend *vide* Exhibit 14 which was allowed by order dated 17.07.2025 subject to condition of deposit of Rs.3,00,000/- within one month from the date of the order.

5. It is the case of the plaintiff that there is no dispute about supply of goods and the defendants had even acknowledged from time to time that amount of Rs.21,77,778/- is due and payable as reflected in the books of accounts which are maintained in ordinary and regular course of business. The learned counsel for the plaintiff submitted that since there is gross failure on the part of the defendants to pay the admitted amount, leave to defend, if any, could be granted subject to deposit of this admitted amount. It is submitted that the defendants had no defence at all and the trial Court has imposed an unreasonable condition of deposit of only Rs.3,00,000/- as a condition precedent. The plaintiff by placing reliance on the judgments of the Hon'ble Supreme Court in *B.L. Kashyap and Sons Ltd. Versus JMS Steels and Power Corporation & Others* [(2022) 3 SCC 294], *IDBI Trusteeship Services Ltd. Versus Hubtown Ltd.* [(2017) 1 SCC 568] and *Southern Sales and Services & Others Versus Sauermilch Design and Handels GMBH* [(2008) 14 SCC 457] and the judgment of this Court in *Sun N Sand Hotel Limited Versus V.V. Kamat* [2003(3) Mh.L.J. 932] submitted that the defendants are not entitled for grant of leave to defend in view of the undisputed claims as reflected in the account books.

6. As against this, it is submitted on behalf of the defendants that the suit filed by the plaintiff is based only on the account statements and the defendants have come up with a case wherein they are disputing even the transactions of supply of goods. It is submitted that the defendants have never acknowledged the payment of any balance amount since the transaction itself is disputed. It is submitted that the defendants have

raised triable issues and *bona fide* defence and thus the defendants are entitled for grant of unconditional leave to defend. By referring to the position of law laid down in the aforesaid cited judgments, it is submitted that in view of the observations of the trial Court that the defendants have raised triable issues and substantial defence, the defendants became entitled for grant of unconditional leave to defend.

7. While considering the controversy involved in the petitions, it has to be seen that the suit filed by the plaintiff is based on the bills and statements of accounts. There are no other written acknowledgments signed by the defendants on record. The suit appears to be based mainly on the account statements. In the application for leave to defend, the defendants have disputed the transactions as alleged in the plaint and made allegations about fabrication of documents. Thus, although on the basis of contentions of the parties, it appears that the plaintiff and the defendants had entered into certain transactions, however there are disputes about the entitlement of the plaintiff to the amount of recovery claimed in the civil suit. The correctness of the entries in the account statements will be a subject matter of adjudication on the basis of evidence. The position of law with respect to the principles governing grant of leave to defend is clarified by the Hon'ble Supreme Court in ***B.L. Kashyap and Sons Ltd.*** (supra) on which both the parties have placed reliance. Paragraphs 33, 33.1 and 33.2 of the said judgment are reproduced below:-

“33. It is at 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 denial of leave to defend is an exception. Putting in 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.

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;”

8. The position of law as laid down in the abovesaid judgment shows that 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 for unconditional leave to defend. In the instant case, the defence sought to be raised by the defendants is found to be a triable defence as observed by the trial Court. There is a dispute about transactions and also about the actual amount. As such, in view of the triable defence raised by the defendants, there is no reason to put any condition only to enable the defendants to raise his defence. As the trial

Court has observed that the defendants have raised triable issues and substantial defence, on the basis of averments in the plaint and contentions raised in the application for leave to defend, it ought to have granted unconditional leave to defend.

9. Having regard to the above mentioned factual and legal aspects, the impugned order passed by the trial Court granting conditional leave to defend needs interference to the extent of condition of deposit of amount. Hence, the following order is passed.

- I. Writ Petition No.4500 of 2025 is allowed.
 - II. The order dated 17.07.2025 passed by the trial Court on application at Exhibit 14 in Summary Civil Suit No.771 of 2024 to the extent of imposition of condition to deposit Rs.3,00,000/- is quashed and set aside. The application at Exhibit 14 is allowed and the defendant is granted unconditional leave to defend.
 - III. Writ Petition No.7662 of 2025 is dismissed.
10. The writ petitions are disposed of in aforesaid terms with no order as to costs. Rule accordingly.

(PRAFULLA S. KHUBALKAR, J.)