

A.No.909 of 2024

in

C.S.No.245 of 2023

MASTER

22.09.2025

ORDER

1.This application has been filed by the applicants/defendants to grant leave to defend this summary suit.

2.This order shall decide the question whether the defendants in A.No.909 of 2024 be granted to leave to defend the present suit under Order 37 Rule 3(5) of CPC r/w Order 7 Rule 1 of Madras High Court Original Side Rules?

3.It is relevant and necessary to note the brief and relevant facts of the case for the decision of the question to be determined and the same is as mentioned below:

(i) The Plaintiffs and 1st defendant are known to each other from school days and the 1st defendant used to borrow money from the Plaintiff as and when required for the purpose of his urgent business needs. The 1st defendant requested the Plaintiff for a short-term business loan as he needed for the trading purposes towards the exchange of 49,000/- Euros Great Britain Pound 40,000 totalling to the tune 80,77,500/- Indian rupee. When the Plaintiff expressed his inability in arranging such huge money, the 1st defendant through his mother who is the 2nd defendant herein pressurized and believing the words of the 1st defendant and oral assurance given by the 2nd defendant the Plaintiff arranged the money and gave to the 1st defendant on 10.02.2021 who collected it at the residence of the plaintiff and executed a demand promissory note in favour of the plaintiff on 10.02.2021. Further, the 1st defendant also executed a letter intimating the deposit of title deeds by way of security for the amount borrowed. The 1st defendant thereafter lodged a false police complaint on 22.02.2021 alleging that the plaintiff is charging exorbitant interest rate, only in order to avoid repayment. The defendants after receiving the

payments failed to repay the same. Hence, the Plaintiff filed this suit against the defendant for recovery of Rs.1,33,69,870/- under Order 37 Rule 1 CPC r/w Order 7 Rule 1 of O.S Rules.

(ii) The Master Summons of the suit was served upon the defendants in prescribed proforma and in pursuance of the summons, appearance was put by the defendants within time as prescribed under the statute. After the service of the summons for judgment to the defendants, an application seeking leave to contest the suit was filed by the defendants. It is contended that this suit is filed to harass the defendants and though the 2nd applicant/2nd defendant being one of the Directors has no active role in the business nor involved in the alleged transaction mentioned in the plaint. The defendants further submitted that the 1st defendant got a loan for a sum of Rs.50,00,000/- which was repaid by him along with interest but the respondent/plaintiff demanded exorbitant interest and informed the defendants that a sum of Rs.1,00,00,000/- is pending. Further, on 12.01.2021 at around 3 p.m the respondent/plaintiff along with his father Ashok, his brother Pradeep and the Manager of the Hema Mahal Kalyana Mandapam threatened and attacked him with criminal intimidation and forcefully obtained signature in 10 empty promissory note, 10 empty stamp and 10 empty cheques of ICICI bank numbers 080976 to 080985 for which the defendants have filed a Police complaint on 13.01.2021. The respondent altered the promissory note as if it was executed on 10.02.2021 which is contrary to his pleadings in the plaint where it is mentioned as 15.02.2021. The defendants further stated that the promissory note on which the respondent relied on was executed by way of fraud, coercion and undue influence and so the suit is liable to be dismissed and this issue is a triable issue which can be decided only based on the oral and documentary evidence adduced by both the parties and prayed to grant unconditional leave to defend the suit.

4. This court have heard the learned counsels for both the parties and gone through the relevant records. On the side of the applicants Ex.P1 to P8 marked. On the side of the respondent Ex.R1 to R9 marked. The learned counsel for the applicants submitted that the present suit was filed by the plaintiff based on promissory note executed by way of fraud, coercion and undue influence and so is invalid in the eye of law. The applicants have already paid the loan amount and that the defendants have filed criminal complaint against the respondent for harassing them and so the suit is liable to be dismissed. It is further contended by learned counsel for applicants/defendants that several triable issues are raised in the suit and prayed to grant leave to defend so that matter is disposed of after trial on merits.

5. Per contra, the learned counsel for the plaintiffs read out the contents of the plaint along with affidavit of the plaintiff, documents filed by the plaintiffs in support of the suit along with application for leave to defend filed by defendants contending that there is no defence by the defendants for grant

of leave to defend and the application for leave to defend is without any ground. The learned counsel for the plaintiffs prayed to dismiss the application and pass decree in favour of plaintiffs and against defendants.

6.The present suit for recovery of money is filed by the plaintiffs against the defendants under Order 37 Rule 1 of CPC r/w Order 7 Rule 1 of Madras High Original Side Rules and the relevant provisions are extracted hereunder for ready reference.

Order 37 Rule 3(5):

The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the court or judge to be just:

Provided that leave to defend shall not be refused unless the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious.

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.

Madras High Court Original Side Rules

Order VII Rule 1 runs as under:

R.1. A suit to recover a debt or a liquidated demand in money, evidenced by a document, or any money payable by the defendant with or without interest, arising on a negotiable instrument or on a bond or a contract for payment of a liquidated amount of money evidenced by a document, or on a guarantee where the claim arises against the principal in the manner aforesaid, may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed.

For the purpose of this order "Liquidated demand" means a demand for the amount stated or so expressed that the ascertainment of the amount is a mere matter of calculation.

Order VII Rule 5 runs as under:

R.5. In any case in which the plaint and summons are in the form prescribed in this order, the defendant shall not defend the suit unless he obtains leave to defend from the Master as hereinafter provided. In default of the defendant obtaining such leave, or if he fails to defend in pursuance of such leave, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for the sum claimed in the plaint, and in cases where interest is payable either by contract or statute, interest till the passing of the decree and further interest at six percent per annum from the date of the decree to the date of payment, and such sum for costs as may be prescribed.

Order VII Rule 6 runs as under:

R.6. (1) An application for leave to defend the suit shall be made to the Master supported by such evidence by way of affidavit as the defendant desires to place before the Court.

(2) Leave to defend may be given unconditionally or subject to such terms and directions as the Master thinks fit.

(3) The Master shall, (a) if the defendant does not appear, on proof by affidavit of service of the summons on the defendant, or (b) if leave to defend is not granted, pass a decree for the amount claimed and costs.

7. As per Original Side Rules of the Madras High Court, in any case which is tried summarily in which the plaint and summons are in the form prescribed in this order, the defendant shall not defend the suit unless he obtains leave to defend from the Master. In default of the defendant, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for the sum claimed in the plaint. Further, if the defendant does not appear, or if leave is not granted, the Master shall pass a decree for the amount claimed in the plaint with the cost.

8. Before proceeding to decide the case on hand, it would be pertinent to note the settled law on the aspect of what would constitute a triable issue, which would allow the defendant leave to defend in cases under Order 37 of the CPC. In the context of grant of leave to defend, the principles of law applicable are well known. This Court obliges to refer the decision of our Hon'ble Apex Court in the

case **IDBI Trusteeship Services Limited Vs Hub Town Limited CIVIL APPEAL NO.10860 of 2016 (Arising out of SLP (Civil) No.31439 of 2015)** in Para 18 held that “18. Accordingly, the principles stated in paragraph 8 of *Mechelec’s* case will now stand superseded, given the amendment of O.XXXVII R.3, and the binding decision of four judges in *Milkhiram’s* case, as follows: If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit;

if the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend;

even if the defendant raises triable issues, if a doubt is left with the trial judge about the defendant’s good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security;

if the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

if the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith;

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.”

9. The learned counsel for the applicant would rely on the decision in **B.L.Kashyap and Sons Ltd. Vs. M/s. JMS Steels and Power Corporation & Anr reported in 2022 CDJ SC 054**, our Hon'ble Apex Court held in para 17 that “17.3. 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.”

10. From the above decisions of the Hon'ble Apex Court, it is also clear that while deciding the questions of the grant of leave, the Court is not required to conduct a full-fledged trial and should only see that if the facts disclosed by the defendant raised any triable points the decision on which may dis-entitle the plaintiff from decree being passed in his favour. At the time of the decision on the question of leave, the Court is not required to seek the proof of the defence of the defendant. Moreover, it is clear that only issues which are those of facts can be taken to be as triable issues.

11. To sum up,

- (i) In a summary suit after service of summons, the defendant should have filed an application for leave to defend.
- (ii) The defendant should have bona fide triable issue for getting unconditional leave to defend.
- (iii) If the case of the defendant is sham or illusion or moonshine the defendant is not entitled to leave to defend.
- (iv) In case, if the defendant has a possible triable issue, he is entitled to conditional leave to defend.
- (v) If the defendant has at least a possible fair and reasonable triable issue, still as a rule, the defendant is entitled to unconditional leave to defend.

12. The brief and relevant facts for filing of the suit along with the defence of the defendant have already been mentioned at the outset. Now the point to be determined is whether the defendant is having any triable, possible or plausible issue in this suit? The 1st defendant in his affidavit filed in support of the application has stated that he got a loan for a sum of Rs.50,00,000/- from the respondent for business purpose on 01.09.2020 and the loan was repaid by him along with interest totaling a sum of Rs.1,00,00,000/-. However, the respondent demanded exorbitant interest and informed the applicants that a sum of Rs.1,00,00,000/- is still due and also forcefully obtained his signature in 10 empty promissory note, 10 empty stamp and 10 empty cheques of ICICI bank numbers 080976 to 080985 by way of threatening and criminal intimidation and in this regard, he has also filed a Police complaint against the respondent on 13.01.2021. It is further stated that the respondent altered the promissory note

as if it was executed on 10.02.2021 and has used in this suit. The payments received by the respondent/plaintiff had been totally suppressed.

13. The borrowal of money is admitted. The execution of pronote is also admitted. It is the case of the applicants that the pro note was executed under fraud, coercion and undue influence and that he had repaid the amount. But no material evidence is placed before this court to evidence the repayment of money. The plea taken by the applicants in this application is that is that the respondent has obtained his signature forcefully in 10 empty promissory note, 10 empty stamp and 10 empty cheques of ICICI bank numbers 080976 to 080985 by way of threatening and criminal intimidation and one such pronote has been altered and used for filing the present suit. On perusal of the records, it is found that the applicant has not denied his signature on any of the documents which have been filed and relied upon by the respondent in filing the present suit. Perusal of Ex.R3 filed by the respondent in which the applicant has written a letter dated 10.02.2021 to the respondent regarding deposit of the title documents towards security for the amount borrowed wherein the applicant also has admitted the execution of the pro note dated 10.02.2021. Ex.R4 to R5 are the sale deeds executed in favour of the 1st applicant respondent and Ex.R6 is the sale deed executed in favour of the 2nd applicant and all these documents cannot be created by the respondent/plaintiff.

14. It is common knowledge that “blank paper” theory is always advanced in almost all cases of promissory note on the ground that the signatures were taken on a blank stamp paper and were all filled up by the person who took the signature and retained the document. Consequently, it is claimed that such an instrument cannot be considered to be a promissory note and the suit must therefore, be dismissed. Moreover, in the case on hand as rightly pointed out by the learned counsel for the respondent the applicants have not taken any further steps to get back the promissory note alleged to have been obtained by fraud, coercion and undue influence at least by way of issuance of legal notice and further when it is the case of the applicants that the respondent has forcefully obtained signatures on 12.01.2021 by threatening and criminal intimidation, he would not have executed the pro note on 10.02.2021 for borrowing a short term business loan and sent WhatsApp message on 15.02.2021 depicting the photograph of bundle of Indian currency showing his bonafide to return the borrowed amount.

15. Similarly, the applicants have also neither denied nor disputed the WhatsApp message correspondence. The applicant has not produced any proof to show that he has repaid the loan amount

and the exhibits filed by the applicants are nothing but documents relating to the criminal proceedings between the applicants and the respondent. In view of the aforesaid discussion, this Court is of the opinion that the plea taken by the applicants are sham, illusory or moonshine and do not raise any triable issue. Therefore, the respondent is entitled to leave to sign judgment and the applicants are not entitled to leave to defend.

Accordingly, the application of the applicant seeking to leave to defend the suit stand dismissed.

MASTER

List of witness on the side of Applicants: NIL

List of exhibits on the side of the Applicants:

<i>Sl.No.</i>	<i>Date</i>	<i>Description</i>
1	13.01.2021	Complaint to Inspector of Police, Crime Branch, Taramani Police Station.
2	20.02.2021	Complaint to Additional Chief Secretary, Chief Secretariat.
3	22.02.2021	Complaint of Department Commissioner of Police, Adyar.
4	26.02.2021	Reply from Deputy Secretary.
5	15.09.2021	Complaint to Commissioner of Police, Chennai U/s 154 (3) Cr.P.C along with Acknowledge Card.
6	16.09.2021	Petition sent to complaint to Commissioner of Police, Chennai U/s 154 (3) Cr.P.C via E-mail along with Certificate dated 19.01.2024 under Section

<i>Sl.No.</i>	<i>Date</i>	<i>Description</i>
		65 B of Evidence Act.
7	17.09.2021	Affidavit and petition filed in Crl.O.P.No.17631 of 2021 before this Hon'be Court.
8	21.04.2022	Order in Crl.O.P.No.17631 of 2021.

List of witness on the side of Respondent:Nil

Respondents side Exhibits:

<i>Sl.No.</i>	<i>Date</i>	<i>Description</i>
1	09.02.2021	WhatsApp Message – Screen-shot copy
2	10.02.2021	Promissory Note – (Original)
3	10.02.2021	Letter intimating deposit of title deeds – (Original)
4	21.04.2011	Sale Deed Doc.No.1871 of 2011 – (Xerox copy)
5	21.04.2011	Sale Deed Doc.No.1872 of 2011 – (Xerox copy)

6	21.04.2017	Sale Deed Doc.No.1872 of 2011 – =(Xerox copy)
7	15.02.2021	WhatsApp Image-Scree-shot copy
8	22.02.2021	Complaint-Xerox copy
9	20.05.2021	CSR-Xerox copy and online copy.

MASTER