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MASTER
19.12.2025

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A.No.4673 of 2025
in
C.S.No.175 of 2025



ORDER

1. This is an application taken by the defendant to grant leave to defend the suit.

2. After filing of this application notice was duly served upon the respondent/plaintiff who filed his counter.

3. Both side counsels heard and materials on records perused.

4. The point to be decided is that whether this applicant/defendant is entitled for leave to defend the suit or not.

5. At this juncture, it is useful to point out the relevant provisions in Madras High Court, Original Side Rules to try summary suits.

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.

6. As per original side rules of 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.



7. 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 XXXVII of the Code of Civil Procedure. 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.”

8. This Court also obliges to refer the decision in **B.L.Kashyap and Sons Limited --Vs-- M/s. JMS Steels and Power Corporation and Another 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.*”

9. *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.*



10. 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.

11. In the present case the applicant/defendant has sought leave to defend the suit for recovery of money mainly on the grounds that the respondent/plaintiff never advanced any money to him much less the sum of Rs.1,29,00,000/- on 18.01.2024, as averred by the respondent/plaintiff in the plaint and that the true fact is that the applicant/defendant had handover a few signed blank cheque leaves and some signed blank cheque papers to the respondent/plaintiff for arranging loan of Rs.50 lakhs for his business purpose but then respondent/plaintiff demanded for higher commission for arranging the finance and so the applicant/defendant arranged it for himself. The said blank cheques were being used by the respondent/plaintiff for initiating the criminal prosecution against him under the Negotiable Instruments Act.

12. Similarly, the defendant has not issued any fresh cheques for the above said amount as stated by the plaintiff in his demand notice dated 18.04.2024 and also denied that he had executed a promissory notice for the said amount in favour of the respondent/plaintiff on 09.05.2024. Yet another ground is that the respondent/plaintiff has filed the suit based on several documents and one such



document is the loan-cum-hypothecation agreement dated 10.12.2024 alleged to have been executed by the applicant/defendant is a fabricated one and it is evident from the document that it does not bear the date and signature of the lender. The above suit is filed by the respondent/plaintiff only with a motive to extract money from him. The learned counsel for the applicant submitted that the above said defence taken by the applicant/defendant can only be decided in trial.

13. Per contra, the learned counsel for the respondent/plaintiff denied the averments of the applicant and prayed that no ground for grant of leave to the defendant has been made out by the applicant and so the decree in favour of the plaintiff is to be passed by this Court.

14. The respondent/plaintiff claims to have lent a sum of Rs.1,29,00,000/- to the defendant for his business purpose. Though the plaintiff claimed that he had filed the suit based on a promissory note by the defendant as well as the acknowledgement letter acknowledging the debt by the applicant/defendant as per the averments made in the plaint, it is seen that the defendant also had executed a loan-cum-hypothecation agreement dated 10.12.2024 indicating to pay the said amount, wherein it does not bear the date and signature of the lender. Further, from the arguments and the averments in the petition filed by the applicant and the plaint it is seen that various proceedings were pending between the applicant/defendant and the respondent/plaintiff with regard to the transaction of the suit claim.

15. The leave to defend application filed by the defendant at the outset has raised several triable issues which raises doubt and needed trial for adjudication. The facts brought by the defendant to the notice of this court by way of this application appears to raise substantial defence and by no stretch of imagination appears to be frivolous or vexatious.



16. On perusal of the material on record would show that the defendant has raised triable issues indicating that he has a fair or bona fide or a reasonable defence. The plaintiff has to prove his case. The defence raised by the applicant/defendant would have to be adjudicated in trial. The issues raised by the applicant/defendant in this application are triable. Therefore, the defendant is entitled to unconditional leave to defend the suit as several triable issues are raised in the matter. Simplicitor denial of the facts pointed out by the applicant/defendant is not sufficient to disentitle him for grant of leave to defend the suit.

In the result, this application for leave to defend is allowed and the defendant is granted unconditional leave to defend the suit.

Sd/-

MASTER