

A.No.6150 of 2025

**in
C.S.No.182 of 2024**

24.07.2025

MASTER

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 on the respondent/plaintiff who had filed his counter stating that the applicant/3rd defendant is very much aware that an agreement was entered into between this respondent/plaintiff and the 4th respondent/4th defendant as power agent of defendant 1 to 3 and in fact the applicant/3rd defendant has negotiated for higher sum from the 4th respondent/4th defendant for transferring his right title and interest in the property and initiated for the sale of his property through the 4th respondent/4th defendant. Now it may not be appropriate on the part of the applicant/3rd defendant to take his strange stand by saying he has no knowledge about the agreement of sale. Further it is stated that the applicant/3rd defendant has not raised any triable issue or substantial defense that would entitle him to leave to defend and sought for the dismissal of this application.

3. This court heard the submissions of the both the learned counsel for the applicant/defendant and the respondent/plaintiff side. Perused the available materials.

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

5. At this juncture, it is useful to extract 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. As stated under Order VII Rule 6(2) of Madras High Court original Side Rules, leave to defend may be granted unconditionally or on terms. At this stage, it is pertinent to point out the law laid down by our 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. In a similar case 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.*”

9. 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.

10. In the case in our hand the applicant/3rd defendant has stated that he is owner of the suit property having purchased the sum from one Mr.K.Saravanan vide sale deed dated 12.12.2007 registered as Doc No.13271/2007 on the file of SRO, Ambattur. Subsequent to which he had executed a general power of attorney dated 03.03.2011 in favour of the 4th Respondent/4th Defendant registered as Doc No.546/2011 on the file of SRO Ambattur. Thereafter the applicant/defendant executed the revocation of general Power of Attorney dated 30.07.2013, canceling general Power of Attorney dated 03.03.2011, duly registered in Doc No.8805/2013 SRO, Ambattur which was duly intimated to the 4th respondent/4th defendant. Upon receipt of summons in the above suit the applicant learnt that the 4th respondent/4th defendant has executed the alleged agreement of sale deed dated 02.12.2021 with the 1st respondent/plaintiff about which he is not aware. To prove his contention, the applicant has filed the typeset of documents namely copy of revocation of general Power of Attorney registered as Doc No.8805/2013 dated 30.7.2013, Encumbrance Certificate Dated 1.12.2007 and 26.02.2021 and copy of letter dated 26.7.2013 issued by the applicant to the 4th respondent. On perusal of the said documents and on hearing both side counsels it is seen that the particular allegation that the applicant/3rd defendant has revoked the

general Power of Attorney given to the 4th Respondent/4th defendant was not specifically denied by the 1st Respondent/Plaintiff and further more even as per the counter filed by the 1st Respondent/plaintiff, it is seen that the 4th respondent/4th defendant has undertaken to obtain necessary Power of Attorney from the applicant/3rd defendant before execution and registration of the sale deed.

11. Whether the 4th respondent/4th defendant is having valid general power of attorney to act on behalf of the applicant/3rd defendant of whether the agreement of sale executed by 4th Respondent/defendant acting as a general power agent of the applicant/defendant is valid or not.

12. This court is of the opinion that there is a triable issue to be tried in this suit. Therefore, unconditional leave is granted to defend this suit and accordingly this application is allowed.

Sd/-

MASTER

