



2025:DHC:3303-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : 05.05.2025*

+ **RFA(COMM) 91/2023**

REGENT CONTINENTALAPPELLANT

Through: Mr R.S. Tomar, Advocate.

versus

NAKUL ASSOCIATESRESPONDENT

Through: Ms Vishalakshi Goel, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (ORAL)

1. The appellant has filed the present appeal under Section 13(1A) of the Commercial Courts Act, 2015 impugning an order dated 25.11.2022 [**impugned order**] passed by the learned Commercial Court in CS (COMM.) No. 293/2021 captioned M/s *Nakul Associates v. Regent Continental Regent Groups of hotels*, whereby the appellant's application for leave to defend the suit was rejected and consequently the same was decreed.
2. The Respondent [**plaintiff**] had filed the aforementioned suit seeking recovery of an amount of ₹17,24,420/- alongwith interest at the rate of 2% per month till 13.05.2021 and future interest.
3. The plaintiff is a sole proprietor of a concern named M/s Nakul Associates and is engaged in the business of dealing in Fire Alarms, Fire Fighting Systems, CCTV, Fire Doors and several other equipments. The



plaintiff claimed that the appellant [**defendant**] had approached him in the month of July, 2019 for installing Fire Doors in one of his properties located at 2/6, East Patel Nagar, New Delhi-110008 [**Patel Nagar property**]. The plaintiff claimed that a meeting was conducted on 05.07.2019 for discussing the terms of supplying and fixing of Fire Doors at the said address. The plaintiff submitted a quotation by a letter dated 09.07.2019 for supplying and fixing Fire Glazed Doors at the said property. The same was accepted and the work was conducted to the satisfaction of defendant. The plaintiff claimed that being satisfied with the work performed by the plaintiff at Patel Nagar property, the defendant once again requested the plaintiff for installing Fire Glazed Doors at its property bearing the address 4/73, W.E.A., Krishna Market, Karol Bagh, New Delhi [**Karol Bagh property**].

4. The plaintiff claims that it had initially quoted an amount of ₹19,49,500/- excluding taxes and other services but it scaled down the same after discussion with the defendant and had submitted the quotation for an amount of ₹16,00,125/- excluding taxes. The plaintiff claims that its quotation was accepted and the defendant issued a cheque bearing no.001789 dated 09.12.2019 for an amount of ₹6,00,000/- as an advance payment for executing the work at the Karol Bagh property. The plaintiff states that after receiving the aforesaid advance payment, it supplied and fixed Fire Glazed Doors at the Karol Bagh Property. It also raised invoices for the supply and work executed being invoice no.35 dated 31.12.2019 amounting to ₹4,68,173/- and invoice no.42 dated 30.01.2020 amounting to ₹14,22,196/-. It is stated that the said work was completed on 03.03.2020 to the entire satisfaction of the defendant.

5. In addition to the aforesaid invoices raised in respect of the work done at Karol Bagh property, the plaintiff had also raised the invoice of ₹36,108/-



for some material supplied and fixed at the defendant's Patel Nagar property. It is stated that after adjusting the amount of ₹6,00,000/- as received, the defendant was liable to pay a balance amount of ₹13,26,477/-, which it had failed and neglected to do.

6. The plaintiff claimed that the defendant was not only required to pay the balance amount as invoiced but is also liable to pay an interest at the rate of 2% per month on the expiry of fifteen days from the date of invoices.

7. The plaintiff filed the summary suit [CS (COMM.) No. 293/2021] under Order XXXVII of the Code of Civil Procedure, 1908.

8. The defendant filed an application for leave to defend, *inter alia*, claiming that the bills and invoices raised were fabricated and false and no goods had been received by the defendants or their representatives. Paragraph 7 of the defendant's application for leave to defend is set out below:

“7. That the suit is based on false and frivolous documents. The copies of the invoice filed by the plaintiff with the suit are totally false and fabricated and no goods was received by the defendants or their representative. In fact, none from Defendants were going to said property after 2015 as such, the suit which is based on those false and fabricated documents is not maintainable and is liable to be dismissed.”

9. The plaintiff claims that there is no question of invoices being doubted as they bear the stamps of the defendant. It is also claimed that an advance had been paid by the defendant, and therefore, the defence raised that it had not issued any purchase instructions and had not received goods is patently false.

10. The scope of the proceedings at the stage of leave to defend is not to finally determine the dispute but to examine whether the defendant had raised any triable issue.



11. In **B.L. Kashyap and Sons Ltd. vs M/S JMS Steels and Power Corporation (2022) 3 SCC 294**, this court had observed as under:

“33. It is at once clear that even though in *IDBI Trusteeship [IDBI Trusteeship Services Ltd. v. Hubtown Ltd., (2017) 1 SCC 568 : (2017) 1 SCC (Civ) 386]*, this Court has observed that the principles stated in para 8 of *Mechelec Engineers case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687]* 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 it 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. In the third eventuality, where the defendant raises triable issues, but it remains doubtful if the defendant is raising the same in good faith or about genuineness of the issues, the trial court is expected to balance the requirements of expeditious disposal of commercial causes on one hand and of not shutting out triable issues by unduly severe orders on the other. Therefore, the trial court may impose conditions both as to time or mode of trial as well as payment into the court or furnishing security. In the fourth eventuality, where the proposed defence appears to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also of payment into the court or furnishing security or both, which may extend to the entire principal sum together with just and requisite interest.

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; but appropriate conditions may be imposed while granting the leave. It is only in the case where the defendant is found to be having no substantial defence and/or raising no genuine triable issues coupled with the court's view that the defence is frivolous or vexatious that the leave to defend is to be refused and the plaintiff is entitled to judgment forthwith. Of course, in the case where any part of the amount claimed by the plaintiff is admitted by the defendant, leave to defend is not to be granted unless the amount so admitted is deposited by the defendant in the court.

33.3. 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. It gets perforce reiterated that even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated above could be imposed while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the defendant fails to show any genuine triable issue and the court finds the defence to be frivolous or vexatious.

12. In the given facts of the present case, there is material on record to indicate that the plaintiff had supplied and fixed glazed doors as claimed and it had also issued invoices, which were received by the defendant. The defendant's defence that Karol Bagh property was leased and he had never visited it, is *prima facie* difficult to accept. In the given circumstances, the



learned Commercial Court had examined the defence raised and found that there was no explanation furnished by the defendant on various aspects including as to the payment of advance. It is contended on behalf of the defendant that there were no dealings between the parties. Given the facts and material on record, the learned Commercial Court found the said defence was insubstantial. The relevant extract of the impugned order is set out below:

“In regard to the second point, plaintiff has not placed any purchase order for the invoices in question. There is also no statement of account. Ld Counsel for the plaintiff argued that the invoices itself prove that orders were placed by the defendant and since they had only limited dealings based on the three invoices, therefore, they were not maintaining any running account. As far as the claimed amount is concerned plaintiff has placed on record his bank statements as per which they had received Rs. 6 Lacs from the defendant on 09-12-2019. Defendant has not specifically replied or given any explanation of this cheque amount. Their only stand is that they had not given any order nor any goods were received. Thus, there is no explanation why the amount of Rs. 6 lac was given to the plaintiff if they had no dealings with the plaintiff. The stamp and signature on the three invoices can be taken as an acknowledgment of the goods I amount by the defendant as there is no explanation as to under what condition, their stamp and their AR's signatures were appearing on the same. Further, plaintiff has placed on record legal notice which was alleged to be replied but no such reply is filed.”

13. Whilst the learned Commercial Court has taken a *prima facie* view as to the defence sought to be raised; we are unable to accept that the defendant has not raised any triable issue. Even though, the defence raised may not appear genuine, the defendant's request for leave to defend could not be denied. In the given circumstances, in our view, a conditional leave to defend ought to have been granted.

14. In view of the above, we consider it apposite to allow the present appeal and grant conditional leave to defend the suit on maintaining the condition to



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deposit the entire principal amount.

15. The appeal is allowed in the aforesaid terms. The impugned order is set aside. The defendant will file his written statement within a period of thirty days from date.

16. We note that the defendant has deposited the entire amount as claimed by the plaintiff with the registry of this court. Insofar as the said deposit is concerned, the Registry of this Court shall abide by any order of the learned Commercial Court regarding its disbursal.

17. List the suit before the learned Commercial Court on 26.05.2025.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 05, 2025/tr

Click here to check corrigendum, if any