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

Date of decision: 05th MAY, 2025

IN THE MATTER OF:

+ **RFA(COMM) 206/2023 & CM APPL. 28074/2022 (Stay)**

BARUN KUMAR

.....APPELLANT

Through: Mr. M.K. Sethi, Mr. Sachin and Mr.
Vijay Singh, Advs.

versus

M S GROUPE SEB INDIA PVT. LTD

.....RESPONDENT

Through: *Appearance not given.*

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

JUDGMENT (ORAL)

SUBRAMONIUM PRASAD, J.

1. The present Appeal is directed against the Judgment and Decree dated 27.01.2020, passed by the learned District Judge, Commercial Courts-02, South East District, Saket, in CS No.9542/2016, filed by the Plaintiff/Respondent herein. *Vide* the impugned Order, the learned District Judge has rejected an application filed by the Defendant/Appellant herein for leave to defend, and consequently, decreeing the Suit in favour of the Plaintiff/Respondent herein in the sum of Rs.20,26,453/- along with *pendent lite* and future interest @ 18% p.a. from the date of the Suit till its realization by the Plaintiff/Respondent herein.

2. Shorn of unnecessary details, the facts, leading to the present Appeal are that Plaintiff/Respondent herein is a stockist of Home Appliances while



the Defendant/Appellant herein is a proprietorship concern which has been appointed as a distributor by the Plaintiff. It is the case of the Plaintiff/Respondent herein that as per their books of account a principal amount of Rs.14,57,880/- is due and payable by the Defendant/Appellant herein as on 02.07.2013. CS No.9542/2016 was filed by the Plaintiff/Respondent herein for recovery of Rs.20,26,453/- on the ground that in order to discharge their liability, the Defendant/Appellant herein had given a cheque bearing No.473755, dated 29.06.2013, drawn on UCO Bank for a sum of Rs.14,57,880/- to the Plaintiff/Respondent herein. However, the said cheque was dishonoured on presentation resulting in filing of a criminal complaint under Section 138 NI Act. It is stated that the said complaint was returned as per the then prevailing Judgment of the Apex Court in Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129, resulting in the present Suit.

3. The Defendant/Appellant herein filed an application for leave to defend in the Suit. In the said application, a preliminary objection was raised on the ground of territorial jurisdiction. Relevant portion of the application for leave to defend filed by the Defendant/Appellant herein in the Suit reads as under:

“3. That the Suit of the Plaintiff is liable to be dismissed on the ground of the jurisdiction of this Hon'ble court. That the transaction of business has done Bihar between the MAHARAJA WHITELINE INDUSTRIES PRIVATE LIMITED and the defendant not with the plaintiff company. It is submitted that the defendant was running business in Bihar at the time of holding distributor ship of the MAHARAJA WHITELINE INDUSTRIES PRIVATE LIMITED plaintiff company. it further submitted that the defendant was applied for distributorship with the



MAHARAJA WHITELINE INDUSTRIES PRIVATE LIMITED company at the place of Patna, Bihar and confirmation has been received at the Patna Bihar by the *MAHARAJA WHITELINE INDUSTRIES PRIVATE LIMITED*. It is submitted that the defendant has not running any business with the plaintiff company.

4. That the suit of the plaintiff is liable to be dismissed on the ground of the cause of action against defendant. That the defendant has issued security cheque on requirement of the company MAHARAJA WHITELINE INDUSTRIES PRIVATE LIMITED for the Purpose Of smooth business transaction. It is further submitted that the defendant was issued above said cheque UCO Bank branch Patna, Bihar at the place of Patna, Bihar.”

4. Vide Order dated 27.01.2020, the learned District Judge, rejected the application filed by the Defendant/Appellant herein seeking leave to defend. The entire Order dated 27.01.2020, which contains just eight paragraphs, reads as under:

“1. As per the plaint, plaintiff is a private limited company duly incorporated under India Companies Act, 1956, having registered office at A-25, First Floor, Mohan Co-operative, Mathura Road, Delhi-110044. They are engaged in the business of suppliers, dealers, stockists of Home Appliances etc. While defendant is a proprietorship concern. The defendants were appointed as distributor of plaintiff company in the capacity of a distributor defendants were supplied with the products of the plaintiff company as per orders and specifications of the defendant to their satisfaction and bills were accordingly raised from time to time. There was a running account between the parties and as per books of account of the plaintiff à principal amount of Rs. 14,57,880/-was due and outstanding against the defendants as on 02.07.2013.



2. The present suit has been filed by the plaintiff under Order XXXVII of the Code of Civil Procedure for recovery of Rs. 20,26,453/-, the basis of plaintiff's suit is cheque bearing no. 473755 dated 29.06.2013 for a sum of Rs. 14,57,880/- Drawn on UCO Bank, Patna Mainn, Branch in favour of the plaintiff from their A/c No. 00620210000618. The said cheque was dishonoured on the presentation. The amount of dishonoured cheque is an admitted debt. 3. Despite repeated requests, reminders and due service of the legal notice dated 02.09.2015, defendants have not complied with the terms of legal notice and the amount outstanding of Rs. 14,57, 880/- remained unpaid. It is thus, claimed by the plaintiff that they are entitled to interest @ 18% per annum with effect from the date of default.

4. On the day of filing of the present suit principal amount due was Rs. 14,57,880/- and interest @ 18% per annum i.e. Rs. 5,68,573/- i.e. since the amount is ascertained the recovery of the same is falling under Order XXXVII of CPC.

5. Summons were issued to the defendants in accordance with Order XXXVII of CPC were served upon to the defendants and the defendants had put in appearance and filed application for leave to defend the case.

6. After due arguments the leave was refused by the court under the Provisions of Order 37 CPC. In the facts and circumstances of the case, the plaintiff is entitled to judgment forthwith.

7. The claim of plaintiff has remained unchallenged.

8. In the present case, the decree in the sum of Rs. 20,26,453/- be drawn in favour of plaintiff against the



defendants.”

5. A perusal of the impugned Order shows that there is hardly any application of mind by the learned District Judge as to why the application filed by the Defendant/Appellant herein seeking leave to defend has been rejected. The Defendant/Appellant herein raised an issue regarding territorial jurisdiction which has not been answered by the learned District Judge in the Order rejecting the application for leave to defend.

6. It is trite law that grant of leave to defend is the rule and rejecting an application for leave to defend is an exception. The Apex Court in B.L. Kashyap & Sons Ltd. v. JMS Steels & Power Corpn., (2022) 3 SCC 294, has 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."
(emphasis supplied)

7. In view of the fact that the application for leave to defend has been dismissed by the learned District Judge without considering any of the grounds taken in the application, more particularly, the ground of territorial jurisdiction, this Court is inclined to set aside the Order dated 27.01.2020, passed by the learned District Judge, Commercial Courts-02, South East District, Saket, in CS No.9542/2016, and remand the matter back to the Trial Court for considering the application of the Defendant/Appellant herein seeking leave to defend, afresh after dealing with the issues raised by the Defendant and considering the same in light of the Judgment passed by the Apex Court.



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8. With these observations, the Appeal is disposed of, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.

MAY 5, 2025
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