



2025:DHC:6536



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 15.07.2025

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C.R.P. 230/2024 & CM APPL. 43787/2024**PINKI AGARWAL & ORS.****.....Petitioners**

Through: Mr. Nalin Tripathi, Mr. Rakesh Kumar, Mr. Ashiwan Mishra, Mr. Eshan Kumar Saxena & Mr. Shubham Bahuguna, Advocates.

versus**RAJESH SHARMA HUF****.....Respondent**

Through: Mr. Hemant Kumar, Mr. Bhavlshya Mohaniya & Ms. Suchitra Singh, Advocates.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed on behalf of the Petitioners under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] against the order dated 19.04.2024 passed by learned District Judge-03 (South West), Dwarka Courts, New Delhi [hereinafter referred to as "Impugned Order"].

2. By the Impugned Order, an Application under Order XXXVII Rule 4 of the CPC [hereinafter referred to as "Application"] for grant of leave to defend filed by the Petitioners (Defendants before the learned Trial Court) has been allowed by the learned Trial Court granting conditional leave to the Petitioners subject to deposit of the principal amount of Rs.44,81,315/- within eight weeks.

3. This Court had on 14.05.2025, after briefly hearing the parties, passed the following directions:

"5. The present Petition has been filed on behalf of the Petitioners under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to



as “CPC”] against the order dated 19.04.2024 passed by learned District Judge-03 (South West), Dwarka Courts, New Delhi [hereinafter referred to as “Impugned Order”]. By the Impugned Order, the Application under Order XXXVII of the CPC for grant of leave to defend has been allowed by the learned Trial Court.

5.1 The leave to defend has been granted on depositing a sum of Rs.44,81,315/- within 8 weeks. The learned Trial Court has also directed the Petitioners to file their Written Statement within 8 weeks thereof.

6. Learned Counsel for the Petitioners contends that the Impugned Order suffers from an infirmity, in as much as, although various triable issues were raised by the Petitioners, the leave to defend that was granted was subject to deposit of the entire loan amount. Learned Counsel seeks to rely upon the judgment of the Supreme Court in **B.L. Kashyap & Sons Ltd. v. JMS Steels & Power Corporation & Anr.**; (2022) 3 SCC 294, more specifically the paragraph 32.2 (17.1 and 17.2) where it refers to the judgment of **IDBI Trusteeship Services Ltd. v. Hubtown Ltd.**; (2017) 1 SCC 568, to submit that where defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the defendant is ordinarily entitled to unconditional leave to defend.

6.1 Learned Counsel for the Petitioners further seeks to rely upon his Application seeking leave to defend wherein he has raised several legal issues in this behalf, including that as to whether the absence of mandatory ingredients of Order XXXVII of the CPC makes the suit not maintainable; the learned Trial Court does not have territorial jurisdiction to adjudicate the suit; the suit is bad for non-joinder of parties; whether the Respondent/plaintiff is a registered money lender; whether in the absence of a written contract it can be presumed that defendants are liable to pay interest. Up to 11 legal issues have been raised in the Application for leave to defend.

7. Learned Counsel for the Respondent, on the other hand, has contended that the predecessor-in-interest of the Petitioners took a loan from the Respondents of Rs.40 lacs, which was paid by the Respondent/Plaintiff in two tranches, one Rs.20 lacs on 07.04.2018 and the other Rs. 20 lacs on 19.02.2019, both transferred directly into the bank account of the predecessor-in-interest of the Petitioners. Thereafter, the predecessor-in-interest of the Petitioners passed away. Since the amounts were not returned, the Respondent/Plaintiff filed a suit for Recovery of Money under Order XXXVII of CPC. **Learned Counsel for the Respondent seeks to rely upon the email dated 27.05.2021 in this behalf.**

8. The Trial Court Record, which has been requisitioned is not correctly bookmarked. The record also shows that the case file is not



bookmarked correctly. The Registry is directed to ensure that the completely bookmarked files are placed before the Court.”

[Emphasis Supplied]

4. Learned Counsel for the Petitioners requests for an adjournment. This request is objected to by the learned Counsel for the Respondent (Plaintiff before the learned Trial Court) who submits that after obtaining an interim protection from a predecessor Bench of this Court on 02.08.2024, the Petitioners are either not appearing or taking adjournments.

5. Learned Counsel for the Respondent also seeks to rely upon the order dated 01.05.2025 in this behalf, when another request for adjournment by the Petitioner was granted, subject to payment of costs. It was also directed by the Court on that day that no further adjournment will be granted, as follows:

“1. An adjournment slip has been circulated on behalf of the Petitioner to which a no objection has been given by the Respondent.

2. The record reflects that the learned Counsel for the Petitioners sought an adjournment on 20.12.2024 and thereafter, on 25.02.2025, a joint request for an adjournment was made.

2.1 The record also reflects that a Coordinate Bench of this Court by its order dated 02.08.2024 directed that the Impugned Order shall be kept in abeyance till the next date of hearing.

3. Accordingly, an adjournment is granted to the Petitioners, subject to the payment of costs in the sum of Rs. 7,500/- payable directly to the “Bar Council of Delhi-Indigent and Disabled Lawyers Account”.

4. It is clarified that the matter will be heard on the next date of hearing and no further adjournment will be granted to either party on the next date of hearing.”

[Emphasis Supplied]

5.1 In view of the foregoing, the matter is being heard and decided today.

6. Learned Counsel for the Respondent once again contends that the



Impugned Order does not suffer from any infirmity. It is submitted that the learned Trial Court found that there is an admission of liability on behalf of the Petitioners including by their predecessor-in-interest, and taking into account such admission, leave to defend was granted, however subject to the deposit of the amounts as directed. Learned Counsel for the Respondent further submits that the Application does not at any place deny the liability of the Petitioner to make payment of the amount loaned, thus, the Impugned Order, which only directs deposit of the amount prayed for, is not infirm.

7. Learned Counsel for the Respondent further points out that a wrong Plaint has been placed on record by the Petitioners before this Court as Annexure P-2.

8. Annexure P-2 to the Petition, which is stated by the Petitioner to be a copy of the Plaint filed before the learned Trial Court, from the cause title itself, reveals that the Plaint filed before this Court is of a different suit. It is apposite to extract the first page of the Plaint, which sets this out, below:

*“IN THE COURT OF THE LD. D.J. (COMMERCIAL COURT)
(SOUTH-EAST), SAKET DISTRICT COURTS, NEW DELHI*

*CIVIL ORIGINAL JURISDICTION
CS. [COMM.] NO. OF 2021
(SUMMARY SUIT UNDER ORDER XXXVII C.P.C., 1908)*

IN THE MATTER OF:

*RHYTHM PROFESSIONAL LLP
THROUGH A / R
SH. RAJESH SHARMA*

.....PLAINTIFF

VERSUS

*PINKI AGARWAL AND ORS.
(LEGAL HEIRS OF LATE SH. VARINDER JINDAL)*

.....DEFENDANTS

*Value of the suit for the purposes of Jurisdiction
Value of the suit for the purposes of Court Fees*

*Rs. 10,08,219/-
Rs. 10,08,219/*



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Court Fee Paid

Rs. 13,000/-

SUMMARY SUIT UNDER ORDER XXXVII C.P.C., 1908, ON BEHALF OF THE PLAINTIFF LLP FOR THE RECOVERY OF RS. 10,08,219/- (RS. TEN LAC EIGHT THOUSAND TWO HUNDRED AND NINETEEN ONLY) ALONG WITH PENDETE LITE AND FUTURE INTEREST @ 12% P.A. FROM 01.04.2020 TILL PAYMENT AND/OR DATE OF REALIZATION.

RECOVERY AMOUNT Rs. 10,08,219/-

COURT FEE PAID: Rs. 13,000/-

MOST RESPECTFULLY SHOWETH:

1. The Plaintiff, i.e., Rhythm Professionals LLP, is an LLP having its office B-120, Second Floor, Lajpat Nagar-1, New Delhi-110024. The Plaintiff LLP vide Resolution Dt. 23.06.2021, has appointed Sh. Rajesh Sharma as its Authorized Representative to file and pursue the present suit. (Annexure 1)...

[Emphasis Supplied]

8.1 This Court has examined the Trial Court Record which has been requisitioned. The Plaint as filed before the learned Trial Court is captioned as ***Rajesh Sharma HUF Through Karta Sh. Rajesh Sharma v. Pinki Agarwal & Ors.*** Clearly the Petitioners have filed an incorrect Plaint before this Court which reflect an apathy on their part.

9. The only contention that has been raised by the learned Counsel for the Petitioners is that unconditional leave should have been granted in view of the legal objections that have been taken by the Petitioners.

10. The Supreme Court in the judgment in ***B.L. Kashyap & Sons Ltd. v. JMS Steels & Power Corporation & Anr.***¹ while relying on the judgment in ***IDBI Trusteeship Services Ltd. v. Hubtown Ltd.***² has set out that in what circumstances leave can be granted and also whether the defendant would be entitled to conditional or unconditional leave. The Supreme Court has held

¹ (2022) 3 SCC 294

² (2017) 1 SCC 568



that if the defendant satisfies the Court that he has substantial defence or raises triable issues indicating a fair, *bonafide* or reasonable defence, even if it is not a positive defence, and is likely to succeed, he would be entitled to unconditional leave to defend. However, where he raises some triable issues, but those issues are still doubtful, as to whether they are in good faith, the learned Trial Court may impose conditions both as to time or mode of trial. It has further been held that where the defence appears to be plausible but improbable, the learned Trial Court may direct the furnishing of the entire amount as security. The relevant extract of ***B.L. Kashyap*** case is set out below:

“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]

11. The learned Counsel for the Respondent has contended that since there is an admission of liability by the Petitioners, the grant of conditional leave is in order.

12. The Application as filed by the Petitioners for Leave to Defend sets out various grounds including on the maintainability of the suit and; whether the suit is bad for non-joinder of parties. Another objection raised is with



respect to the rate of interest. A ground has also been taken that whether there was any agreement between the Respondent/Plaintiff and the Petitioners/Defendants regarding refund of loans, whether the right to sue survives. The other challenge in the Application is on the ground of territorial jurisdiction of the Court, it was stated that the payments in issue have been transferred from a Bank of the Respondent/Plaintiff at Minto Road to the bank of the defendant in Rajasthan and thus the Court lacked jurisdiction.

12.1 The examination of the Application for Leave to Defend by this Court does not reflect any ground for unconditional leave or for leave subject to deposit of partial amounts as is claimed by the Petitioner.

13. There is another aspect as well. The Application, however, does not set out any defence nor challenges the fact that payment was made from the Bank account of the Respondent/Plaintiff to the Petitioner. This payment is in fact an admission by the Petitioner of monies received. No explanation has been provided as to why the monies were not returned.

13.1 It is also not disputed by the Petitioner No.1/Defendant No.1 that an amount of Rs.40 lacs was received through bank transfers in the sum of Rs.20 lacs each made on 07.04.2018 and 19.02.2019. The Respondent has also placed on record the written acknowledgment of the debt by email dated 27.06.2020 and a confirmation of accounts as well on 31.03.2020 by the Petitioners.

14. In view of the acknowledgment of the debt, the leave to defend has been granted subject to the condition of deposit of the principal amount by the learned Trial Court.



15. On the aspect of territorial jurisdiction, the Petitioners in the Reply to the Leave to Defend Application have stated that the agreement between the parties took place in a meeting between Sh. Varinder Jindal and Defendant No.1 [Petitioner No.1 before this Court] at the Respondent/Plaintiff's address and thus, the learned Trial Court has jurisdiction to entertain the Petition under Section 20 C of the CPC.

16. As discussed above, the Supreme Court in **B.L. Kashyap** case has held that where there is an admission of the claim by the plaintiff, the leave to defend to the defendant would not be granted unless the amounts are deposited by the defendant. The Impugned Order had done just that.

17. It is settled law that the revisionary jurisdiction of this Court is limited to examine whether the learned Trial Court has failed to exercise jurisdiction vested in it or has exercised jurisdiction which is not vested in it or has acted with illegal or material irregularity.

17.1 The Supreme Court in the case of **Ambadas Khanduji Shinde & Ors. v. Ashok Sadashiv Mamurkar & Ors.**³ clarified that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of CPC, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. It has been held as follows:

*"14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual findings while exercising jurisdiction under Section 115 of the Civil Procedure Code. **It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. In the facts on hand, the courts***

³ (2017) 14 SCC 132



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below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial court.”

[Emphasis Supplied]

18. The examination by this Court shows that the Impugned Order does not suffer from any infirmity which would merit interference by this Court.

19. The present Petition is accordingly dismissed. The pending Application also stands closed.

20. The Petitioners are granted additional six weeks’ time to deposit the amounts before the learned Trial Court.

20.1 The parties shall appear before the learned Trial Court on 28.08.2025.

21. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JULY 15, 2025/ ha/r