



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.16991 OF 2025**

Ravi Laxman Vasnani and Ors. ... Petitioners
versus
Anup Parmanand Jhamtani ... Respondent

Mr. Naresh Shamnani with Mr. Aniket Khilnani, for Petitioners.
Ms. Minal Chandnani with Mr. Rajesh Ranglani, for Respondent.

CORAM: N.J.JAMADAR, J.

**RESERVED ON : 23 DECEMBER 2025
PRONOUNCED ON : 9 JANUARY 2026**

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.
2. The Petitioners – original Defendants, take exception to an order dated 20 August 2025 passed by the learned Civil Judge, Sr. Division, Pune, whereby leave to defend the Summary Suit has been granted to the Petitioners on the condition of deposit of a sum of Rs.58,44,263/-.
3. Shorn of superfluities, the background facts can be stated, as under :
 - 3.1 For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed before the Trial Court.
 - 3.2 Plaintiff is the karta of Anup Parmanand Jhamtani, HUF. The Plaintiff is engaged in the business of tiles, CP fittings, sanitary fittings, construction materials, etc. under the name and style of of Jhamtani CeraKraft. Defendant

No.1 was allegedly an employee of the Plaintiff. Defendant No.2 is the real brother of Defendant No.1. Defendant Nos.3 and 4 are the partnership firms and Defendant No.5 is a limited liability partnership firm. Defendant Nos.1 and 2 allegedly have vested interest in Defendant Nos.3 to 5 firms. Defendant Nos.1 and 2 and/or their family members are the partners of the said firm.

3.3 The Plaintiff alleged, Defendant No.1, by taking undue advantage of his position, as the Manager of Jhamtani CeraKraft, caused wrongful loss to the Plaintiff by malafide diverting all the leads, contracts and business of the Plaintiff to Defendant Nos.3 to 5 firms. Upon the alleged fraud and misappropriation being unearthed, and, threatened with criminal action, the Defendants admitted and acknowledged their misdeeds, and voluntarily agreed to pay compensation for the wrongful loss caused to the Plaintiff.

3.4 Accordingly, a MOU was executed on 27 November 2020. It was, inter alia, agreed and acknowledged by the Defendants that they would pay a sum of Rs.1 Crore by way of compensation till the actual loss suffered by the Plaintiff on account of the unlawful and illegal acts of the Defendant No.1 was determined, after audit of the accounts.

3.5 The Plaintiff further asserted that, after the accounts were taken, the Defendants agreed and acknowledged the liability to pay a sum of Rs.1,41,00,000/- and, accordingly, a Supplementary MOU came to be

executed on 16 December 2020. Out of the said amount, the Defendants paid a sum of Rs.54,81,737/- only. After adjusting a sum of Rs.27,74,000/- payable by the Plaintiff to the Defendant No.1 towards latter's sales commission, the Defendants were liable to pay the balance amount of Rs.58,44,263/-. Hence, the Summary Suit for recovery of the said amount along with interest @ 18% p.a.

3.6 Upon service of the writ of summons, the Defendants appeared and sought leave to defend. It was, inter alia, contended by the Defendants that the Plaintiff had instituted the suit by misusing the custody of the MOUs, which Defendant Nos.1 and 2 were coerced to execute. It was categorically denied that the Defendant No.1 had committed misappropriation as alleged and the Defendants had, thus, acknowledged to pay the amount as indicated in the MOUs towards the compensation for the wrongful loss. On the contrary, according to the Defendants, there were commercial transactions between the Plaintiff and Defendants. The Plaintiff had, in fact, availed the services of the manufacture of modular kitchen from Defendant No.3 firm and had also purchased material for his projects from Defendant No.4. Defendant No.2 had taken a shop on leave and licence basis from the Plaintiff and stored the goods and material in the said premises. The Plaintiff was purchasing material from the firm of Defendant No.2 as well. When Defendant Nos.2 and 4 demanded the price of the goods and material

purchased by the Plaintiff, the Plaintiff allegedly called Defendant Nos.1 and 2 and coerced them to execute documents by putting them in fear by employing bouncers and manhandling the Defendant Nos.1 and 2. Defendants claimed that Defendant No.1 and his mother had lodged complaints with local police, but no action was taken against the Plaintiff. On these, amongst other, grounds, the Defendants sought an unconditional leave to defend the suit.

3.7 Learned Civil Judge was of the view that, though the Defendants had raised the defence of execution of the MOU under coercion and duress, yet, the fact remained that the execution, as such, of the MOUs was incontrovertible. Since the MOUs constituted acknowledgment of the liability and there was also material to show that some payment was made by the Defendants, leave to defend can be granted only upon depositing the balance outstanding amount of Rs.58,44,263/-.

3.9 Being aggrieved, the Defendants have invoked the writ jurisdiction.

4. I have heard Mr. Naresh Shamnani, learned Counsel for the Petitioners, and Ms. Minal Chandnani, learned Counsel for the Respondent, at some length. With the assistance of the learned Counsel for the parties, I have also perused the material on record.

5. Mr. Shamnani, learned Counsel for the Petitioners, would submit that the trial court completely misdirected itself in granting leave to defend on the condition of deposit of amount, when the Defendants had brought material on

record to show the circumstances in which MOUs were allegedly executed. Laying emphasis on the intrinsic evidence of the MOUs and the inherent contradictions therein, Mr. Shamnani would urge that, a bare perusal of the MOUs would indicate that those documents were completely one-sided and indicated the amount of pressure exerted on Defendant Nos.1 and 2.

6. Mr. Shamnani would submit that, the learned Civil Judge downplayed the fact that there was material in the form of leave and licence agreement and contemporaneous record which lent credence to the defence of the Defendants. The learned Civil Judge did not apply the correct test to determine whether the Defendants have demonstrated a fair and reasonable defence. The condition of deposit of the alleged outstanding amount, in a situation of the present nature, has the effect of denial of opportunity to defend the suit, submitted Mr. Shamnani.

7. In opposition to this, Ms. Chandnani, the learned Counsel for the Respondent-Plaintiff, would submit that, at no point of time, the Defendants had challenged the legality and validity of the MOUs. Inviting attention of the Court to the ledger of the GV Enterprises in the account of Jhamtani CeraKraft, Ms. Chandnani would urge, the entries therein would show that, the amounts shown in the MOUs were, in fact, paid by the Defendants to the Plaintiff. As there is material to demonstrate that the MOUs had been acted upon, the learned Civil Judge was well within his rights in granting leave to

defend the suit subject to the condition of deposit of the outstanding amount. Therefore, no interference is warranted with the impugned order in exercise of the writ jurisdiction, submitted Ms. Chandnani.

8. I have given anxious consideration to the submissions canvassed across the bar. The legal position as regards the grant of leave to defend a summary suit is well crystallised. If the defendant raises a substantial defence, leave to defend is required to be granted unconditionally. Where the defendant raises a triable issue in the sense that the defence is fair and reasonable, ordinarily, the defendant is entitled to unconditional leave to defend the suit. However, where the defendant raises a triable issue, but, the Court entertains doubt about the bonafide of the said defence or such defence though plausible, yet, appears to be improbable to the Court, conditional leave to defend the suit can be granted. The conditions may relate to time or mode of trial or an order for deposit of the amount or security for the claim amount. It is only in those cases where Courts finds that defence raised by the defendant is sham and bogus, the Court can decline to grant leave to defend the suit.

9. A profitable reference in this context can be made to a judgment of the Supreme Court in the case of **Raj Duggal V/s. Ramesh Kumar Bansal**¹, wherein the Supreme Court succinctly enunciated the principles which govern

1 1991 Supp (1) SCC 191

the grant of leave to defend the summary suit, as under :

“3. Leave is declined where the court is of the opinion that the grant of leave would merely enable the defendant to prolong the litigation by raising untenable and frivolous defences. The test is to see whether the defence raises a real issue and not a sham one, in the sense that if the facts alleged by the defendant are established there would be a good or even a plausible defence on those facts. If the court is satisfied about that leave must be given. If there is a triable issue in the sense that there is a fair dispute to be tried as to the meaning of a document on which the claim is based or uncertainty as to the amount actually due or where the alleged facts are of such a nature as to entitle the defendant to interrogate the plaintiff or to cross- examine his witnesses leave should not be denied. Where also, the defendant shows that even on a fair probability he was a bona fide defence, he ought to have leave. Summary judgments under Order 37 should not be granted where serious conflict as to matter of fact or where any difficulty on issues as to law arises. The court should not reject the defence of the defendant merely because of its inherent implausibility or its inconsistency.”

10. The Supreme Court in the case of ***IDBI Trusteeship Services Limited vs. Hubtown Limited***² restated the propositions, in paragraph 17, as under:

2 (2017) 1 Supreme Court Cases 568.

“17. Accordingly, the principles stated in paragraph 8 of *Mechelec's* case will now stand superseded, given the amendment of Order 37 Rule 3, and the binding decision of four judges in *Milkhiram's* case, as follows:

17.1 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;

17.2 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;

17.3 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;

17.4 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.

17.5 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;

17.6 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.”

(emphasis supplied)

11. In the case of **B.L.Kashyap and Sons Ltd. V/s. JMS Steels and Power Corporation and Anr.**³, after adverting to the previous

3 (2022) 3 SCC 294

pronouncements, including the judgment in the case of **IDBI Trusteeship Services Ltd. V/s. Hubtown Ltd.**⁴, the Supreme Court enunciated the law as under :

“33. It is at once clear that even though in the case of IDBI Trusteeship (supra), this Court has observed that the principles stated in paragraph 8 of Mechelec Engineers Case⁵ shall stand superseded in the wake of amendment of Rule 3 of Order XXXVII 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 bonafide 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,

4 (2017) 1 SCC 568

5 (1976) 4 SCC 687

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 appear 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)

12. On the aforesaid touchstone, readverting to the facts of the case, first and foremost, the nature of the suit claim deserves to be taken into account. It is the case of the Plaintiff that the Defendant No.1 was working as a Manager with Jhamtani CeraKraft and by taking undue advantage of the said position, the Defendant No.1 diverted the leads, clientele and business of the Plaintiff to Defendant Nos.3 to 5 firms, and, thereby caused wrongful loss to the Plaintiff. Upon being confronted and threatened with criminal action, Defendant Nos.2, and 3 to 5 firms, who were represented by their respective partners, who happened to be the family members of the Defendant No.1, acknowledged the liability to compensate the Plaintiff for the said wrongful

loss. It is the default in the discharge of the said liability that gave rise to the summary suit.

13. Keeping in view the aforesaid nature of the suit claim, the quality of the defence sought to be put forth by the Defendants was required to be appreciated. The Defendants claimed that, there were, in fact, commercial transactions between the Plaintiff and Defendant Nos.3 and 4 firms. Defendant No.2 had taken the premises of the Plaintiff on leave and licence basis. Prima facie, there is material to show that a premises was indeed taken on leave and licence basis, as is evidenced by the registered leave and licence agreement dated 17 July 2015. In addition, there are ledger accounts which show the business transactions between the Plaintiff and Defendant Nos.3 and 4 firms.

14. The intrinsic evidence of the MOUs, which constitute the substratum of the Plaintiff's case also deserved to be noted. A bare perusal of the terms of the MOUs, would indicate that, the stipulations therein were one-sided, onerous and restrictive of the rights of the Defendants excessively. In addition to the acknowledgment of the liability to pay a sum of Rs.1 Crore, the Defendants were sought to be restrained from conducting business of tiles, CP sanitary fittings or in any other any product or any business activity engaged in by the Plaintiff. The latter had a charge over all the stock, bank balance, vehicles and movable and immovable properties and security

deposit etc. of the Defendants. Moreover, the Defendants had to furnish security of C-502, Mantri Mystica, Behind Rainbow Plaza, Rahatni, Pune – 411 017 for the performance of the liability to pay compensation for the loss allegedly caused to the Plaintiff. The Defendants were to neither change their address nor leave the city so as to evade the liability of compensating the loss caused by them. The Defendants acknowledged their liability for the criminal prosecution as well.

15. The aforesaid stipulations in the MOUs, betrayed an intent to pin down the Defendants to a situation of no escape.

16. Evidently, there was no privity of contract between Plaintiff and Defendant Nos. 2 to 5. It is imperative to note that, Defendant Nos.2 to 5 were sought to be roped in on the premise that, Defendant No.1, the alleged employee of the Plaintiff, had the vested interest in Defendant Nos.3 to 5 firms and the business of the Plaintiff's firm was diverted to Defendant Nos. 3 to 5, firms. If the aforesaid tenor of the MOUs, is considered in conjunction with the material which demonstrates that Defendant No.1 and his mother had lodged complaints with the police and there were independent commercial transactions between the Plaintiff and Defendant Nos.2 to 4, the defence raised by the Defendants cannot be said to be sham or moonshine. The Defendants have succeeded in bringing on record adequate material to show that they have a fair and reasonable defence, if not a strong defence. The

learned Civil Judge lost sight of the broad tenor of the Plaintiff's case and the circumstances in which the MOUs were allegedly executed, and, was unduely swayed by the alleged acknowledgment of liability.

17. In a situation of the present nature, in my considered view, the proposition 17.6 in the case of **IDBI Trusteeship Services Ltd. (supra)**, namely, 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, does not apply.

18. In the case at hand, a triable issue as to the very execution of the MOUs out of the own volition of the Defendants has been raised. Consequently, the Defendants deserve an unconditional leave to defend the suit. Resultantly, the impugned order cannot be sustained. Hence, the Writ Petition deserves to be allowed.

19. Thus, the following order :

ORDER

(i) The Writ Petition stands allowed.

(ii) The impugned order dated 20 August 2025 passed by the learned Civil Judge, Sr. Division, Pune, below Exh.78 in Summary Suit No.291 of 2021 stands quashed and set aside to the extent of granting leave to defend the suit to the Defendants on the condition of deposit of the amount

of Rs.58,44,263/- in the trial Court.

(iii) The Petitioners – Defendants are granted unconditional leave to defend the suit.

(iv) The Defendants shall file Written Statement within a period of one month from today.

(v) Rule made absolute in the aforesaid terms.

(vi) No costs.

(N.J.JAMADAR, J.)