

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17720 OF 2025

The Railway Goods Clearing & Forwarding
Establishments Labour Board

..Petitioner

Versus

The Bank of Baroda

...Respondent

Mr. Sanjay P Shinde, for the Petitioner.

Mr. Anand B shinde, for the Respondent.

CORAM : N. J. JAMADAR, J.

DATE : 16th APRIL 2026

ORAL ORDER:

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 27th October, 2025 passed by the learned Judge, City Civil Court at Mazgaon whereby an unconditional leave to defend the suit has been granted to the respondent/defendant.
3. The petitioner/plaintiff has instituted a summary suit for recovery of a sum of Rs. 5,87,23,245/- (Rupees Five Crores Eighty Seven Lakhs Twenty Three Thousand Two Hundred and Forty Five) against the Respondent - Bank as from the account maintained by the petitioner with the Respondent Bank, a sum of Rs. 5,06,05,000/- (Rupees Five Crores Six Lakhs Five Thousand) was debited on the basis of the cheques which,

according to the plaintiff, were not drawn by the plaintiff, during the period 7th January, 2021 to 2nd March, 2021.

4. The Respondent/Defendant contended that, the Respondent Bank had followed the procedure in the matter of encashment of the cheques. The cloned cheques were presented to the Bank and after due verification of the signature and sending intimation on the registered mobile number, the concerned officers of the respective branches, where the cheques were presented for encashment, had passed the cheques. There was no negligence on the part of the Respondent Bank.

5. By the impugned order, the learned Judge, City Civil Court was persuaded to grant an unconditional leave to defend the suit observing *inter alia* that, the petitioner/plaintiff would be required to first establish that, the bank was negligent in clearing the cheques and that the signatures on the purported cloned cheques were forged and fabricated and not genuine. Upon proof of these two primary facts, the onus would shift to the Respondent Bank. Therefore, the Respondent bank was held to have raised triable issues to deserve an unconditional leave to defend the suit.

6. Mr. Sanjay Shinde, the learned Counsel for the petitioner, submitted that, the learned Judge, City Civil Court did not

properly appreciate the defence of the defendant. Implicit in the defence of the defendant that, cloned cheques were encashed was an admission that, the cheques were forged. Laying emphasis on the fact that, the original cheque leaves, which were allegedly presented and cleared, were in the custody of the plaintiff, it was submitted that, the fact that the cheques were encashed by fraudulent means could hardly be disputed. In such a situation, a bonafide customer, who has deposited the amount by reposing trust in the Bank, cannot be made to suffer the consequences of negligence and fraud. Thus, the learned Judge, City Civil Court ought not to have granted an unconditional leave to defend the suit.

7. In opposition to this, Mr. Anand Shinde, the learned Counsel for the Respondent - Bank would submit that, the learned Judge, City Civil Court has correctly exercised the jurisdiction to grant an unconditional leave to defend the suit. Taking the Court through the affidavit seeking leave to defend and the material on record, it was submitted that, there was no negligence on the part of the Respondent Bank and it had followed the standard procedure.

8. Evidently, once the fraud was discovered, the plaintiff lodged a report. The investigation is stated to be underway. In

the meanwhile, the plaintiff instituted the suit for the recovery of the amount which was fraudulently withdrawn from the account of the plaintiff. The question that would warrant adjudication at the trial is, whether the cheques were cleared on account of negligence or imprudent banking practices on behalf of the Respondent - Bank. It is in this context, the Respondent - Bank has contended, in the affidavit seeking leave to defend, that the cloned cheques were presented for encashment and the concerned officers of the Bank had examined and verified the signatures on the cheques under UV rays and those signatures tallied with the specimen signatures. Thus, there was no negligence on the part of the officers of the Respondent - Bank.

9. The principles which govern the grant of leave to defend a summary suit have been crystalized by a catena of judgments. A useful reference in this context can be made to a decision of the Supreme Court in the case of *B.L. Kashyap And Sons Ltd. vs M/S Jms Steels And Power Corporation & anr.*¹, wherein the law was summarized by the Supreme Court in Paragraph No. 33.3, which reads as under:-

"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

1 (2022) 3 SCC 294

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)

10. In the context of the nature of controversy at hand, where a fraud has allegedly been played to encash the cheques and withdraw the amount from the account of the Plaintiff, the question as to whether the bank deserves an opportunity to contest the claim of the plaintiff, arises for consideration.

11. In the case of *State Bank of Hyderabad Vs. RABO Bank*², in the context of the facts of the said case, wherein it was alleged that, the officials of the bank had indulged in fraud, the Supreme Court observed *inter alia* as under :-

2 (2015) 10 SCC 521

"17. An analysis of the above principles makes it clear that in cases where the defendant has raised a triable issue or a reasonable defence, the defendant is entitled to unconditional leave to defend. Leave is granted to defend even in cases where the defendant upon disclosing a fact, though lacks the defence but makes a positive impression that at the trial the defence would be established to the plaintiff's claim. Only in the cases where the defence set up is illusory or sham or practically moonshine, the plaintiff is entitled to leave to sign judgment.

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21. In the case on hand, we have perused the material on record including the FIR dated 9th August, 1999 registered by the CBI at the instance of Chief Vigilance Officer, SBH and also the Charge Sheet filed by the CBI. The charge sheet indicated the involvement of Mr. Sudhir Behra, Chief Manager of the appellant Bank at Burra Bazar Branch, Calcutta. Acting at the requests of representatives from the Indian clients of the respondent's constituent, the Chief Manager had induced some officers of the appellant Bank who were In-charge of Foreign Exchange Department to issue tested telex messages of co-acceptance. The charge sheet further alleges that these officers were not authorized to issue such co-acceptances and the motive behind their illegal and unauthorized action was to enable the constituent of the respondent to get their bills discounted by jeopardizing the interests of the appellant Bank. It is also on record that the trial of the said case was at the stage of evidence as on 13th November, 2014.

22. Apart from these, the substantial revelations of the defendant (appellant) in the affidavit coupled with the views expressed by the Division Bench of the High Court makes it clear that there are certain triable issues for adjudication and the defendant/appellant is entitled to defend the Suit. The appellate side of the High Court ought to have taken into consideration the factual matrix of the case before recording its finding. Taking into consideration the totality of the facts and circumstances of the case, we are of the opinion that the defendant/appellant has made out a prima facie case of triable issues in the Suit which needs to be adjudicated. Therefore, the defendant is entitled to grant of unconditional leave to defend the Suit.

23. Although certain other issues are raised by both the parties, in view of our finding that the defendant/appellant is entitled to leave to defend the Suit, we do not find it necessary to go into other issues at this stage. As regards the contention advanced on behalf of the respondent/plaintiff that the mere denial of liability by the appellant Bank saying that the Officer in charge of the Foreign Exchange Department of the appellant Bank was not authorized to give co-acceptance to the Bills and thereby alleging a fraud by the officials cannot be sustained as those are the internal affairs of the defendant Bank for which the plaintiff/respondent cannot be penalized and the international trade practices and banking regulations have to be respected, this Court need not to go in detail in respect of these issues when we have come to an irresistible conclusion that the appellant/defendant is entitled to defend the Suit. Hence, we are reluctant to give findings on any of these

issues which may adversely affect the trial of the Suit.

(emphasis supplied)

12. In the instant case, the Respondent - Bank has raised a triable issue in the sense that, it is the defence of the Respondent - Bank that cloned cheques were presented for encashment and, before clearing the cheques, it has followed the standard procedure of intimating the customer on the registered mobile number and verifying the signatures on the cheques with the specimen signatures. Whether the Respondent - Bank succeeds in establishing the aforesaid facts is an altogether different matter. However, at this stage, the exercise of discretion by the learned Judge, City Civil Court in granting an unconditional leave to defend the suit, cannot be faulted at.

13. Since the Petitioner/Plaintiff is a Board of Mathadi Workers, and the amount represents the contribution of the workers, it would be expedient that, the suit is decided as expeditiously as possible.

14. The Court is informed that, the written statement has been filed and the matter is posted for settlement of issues on 29th June, 2026.

15. Hence, the Writ Petition stands disposed with a request to the learned Judge, City Civil Court to hear and decide the suit

as expeditiously as possible and, preferably, within a period of one year from 29th June, 2026.

[N. J. JAMADAR, J.]