

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3942 OF 2026

Pavan Structurals Pvt. Ltd. Through S. R.
Belkune

...Petitioner

Versus

Nirman Steel Through the Proprietor

...Respondent

SANTOSH
SUBHASH
KULKARNI

Mr. Nikhil Wadikar, a/w Rushikesh Desai, i/b Niranjan
Kandade, for the Petitioner.

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CORAM: N. J. JAMADAR, J.
DATED: 6th APRIL, 2026

Oral Order:-

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to an order dated 21st August, 2025 passed by the learned Civil Judge, Belapur, whereby an unconditional leave to defend the suit has been granted.
3. Mr. Wadikar, the learned Counsel for the petitioner, submitted that counter-claim professed to be filed by the respondent - defendant is barred by law of limitation. Secondly, since it is not the case of the respondent – defendant that, the purported partnership between the plaintiff and one Mr. Lalit S. Jain has been dissolved, there was no occasion for the

settlement of accounts. Since the defendant has not denied the sale and delivery of the goods, the learned Civil Judge ought not to have granted an unconditional leave to defend the suit. Reliance was placed on a judgment of the this Court in the case of *Olive Tree Trading Pvt. Ltd. vs. F.lli De Cecco Di Filipro – Fara S. Martino S.P.A.*¹, wherein after following a previous pronouncement in the case of *Suraj Sanghi Finance Ltd. vs. Credential Finance Ltd. and others*², it was held that merely because the defendant has filed the counter-claim that would not detract from a summary suit or result in the suit filed as a summary suit being treated as regular suit.

4. The learned Judge was persuaded to grant an unconditional leave to defend, in view of the defence raised by the defendant that, there was a Memorandum of Understanding (“MoU”) between the parties, under which the parties had agreed to carry on the business of partnership and the said MoU contained certain stipulations which rendered the defence of the defendants *bona fide* and gave rise to a triable issue.

5. Paragraph 5 of the said MoU reads as under:

“5. Party of first part shall not insist party of second part for possible payment outstanding by him or by his group

1 WP/2694/2018 dtd.23/3/2018.

2 2002(4) Mh.L.J. 770.

company (i.e. Nav Nirman Private Limited and Nirman Steel) to Pavan Structural Private Limited, as well as the creditor amounts payable (i.e. M/s Shah Steels Corporation and M/s Anmol Steel Processors Private Limited by Pavan Structural Private Limited shall not be insisted for payment, till the date final account is approved by both the parties of this understanding for the pipe mill business of Pavan Structural Private Limited.”

6. The debt owed by the defendant – respondent to the plaintiff was sought to be deferred under the terms of the said MoU till the settlement of accounts between the parties. Whether the defendant eventually succeeds in the counter-claim or not, is a matter to be adjudicated at the trial. The aforesaid stipulation in the MoU *prima facie* goes to the root of the matter and renders the very enforceability of the debt contentious. In the aforesaid view of the matter, the learned Civil Judge does not seem to have committed any error in granting an unconditional leave to defend.

7. The decision of the Supreme Court in the case of ***B. L. Kashyap And Sons Ltd. Vs. M/S Jms Steels And Power Corporation & Anr.***³ makes the position in law in regard to the grant of leave to defend the suit explicitly clear. Paragraph 33 of the said judgment reads as under:

“33. It is at once clear that even though in the case of IDBI Trusteeship, this Court has observed that the principles stated in paragraph 8 of Mechelec Engineers’ case 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, 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)

8. Applying the aforesaid principles to the facts of the case at hand the learned Judge was justified in holding that the defendant has raised triable issues and the defence appeared to be reasonable and *bona fide*. Thus in exercise of supervisory jurisdiction, this Court does not find any patent illegality, legal infirmity or perversity in the impugned order. Therefore, the petition stands dismissed.

[N. J. JAMADAR, J.]