



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5761 OF 2025

1. Mana Devi Thakur Prasad Gupta, Age : 75 years,
Occ: Business.
2. Mamata Jai Prakash Gupta, Age : 45 years, Occ.Service.
3. Jai Prakash Thakur Prasad Gupta, Age : 49 years,
Occ: Service.

All the petitioners are R/o 203, Devika Tower, Kalpana Nagar,
Power Grid Chowk, Ring Road, Uppalwadi, Nagpur-440026.

PETITIONERS

VERSUS

Krishnamurari Parasnath Pandey, Age : 55 years,
Occ: Business, R/o Flat No.S1, Dhanlaxmi Apartment,
Wankhede Layout, Near Chetna Apartment, Koradi Road,
Mankapur, Nagpur - 440030.

RESPONDENT

Shri Sahil S. Dewani, counsel for the petitioners.
None for the respondent, though served.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : JANUARY 07, 2026

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally.

2. In this petition, the notice was issued by order dated 29.09.2025 which was served upon the respondent however, nobody appeared for him on 01.12.2025. Thereafter, even on 15.12.2025, nobody appeared for the respondent and to grant one more opportunity for the respondent, the matter was adjourned to today. Today also, nobody appeared for the respondent and the matter is taken up for consideration.

3. The petitioners have challenged the order dated 14.08.2025 passed by the trial Court granting unconditional leave to defend to the respondent in the summary suit.

4. The petitioners who are the original plaintiffs have filed Summary Suit No.5 of 2024 for recovery of amount of Rs.14,04,593/- alongwith interest from the defendant. After the notice in the suit was served upon the defendant, he appeared and filed application at Exhibit 15 for leave to defend. Though the application was resisted by the plaintiffs, it came to be allowed on 14.08.2025 thereby granting unconditional leave to defend, to the defendant. This order is subjected to challenge in the instant petition.

5. The learned counsel for the petitioners submitted that the impugned order granting unconditional leave to defend is unsustainable as the application for leave to defend was entertained although filed beyond the stipulated period and further in absence of any substantial defence, the trial Court has granted the unconditional leave to defend. He submitted that the defendant failed to submit the necessary application within the prescribed time in accordance with the provisions of Order XXXVII Rule 3 of the Code of Civil Procedure, 1908 (for short, 'the Code') and has also not raised any substantial defence on merits with respect to the claim raised by the plaintiffs in the suit. He submitted that the trial Court has wrongly observed that the defendant has raised a triable issue and thus became entitled for unconditional leave to defend. He also invited the Court's attention to the observations of the trial Court in the impugned order that the plaintiffs have an excellent case for recovery of money from the defendant however, despite this the trial Court has granted unconditional

leave to defend. In support of his submissions, he placed reliance on the unreported order of this Court in ***Deepak Sampatrao Gaikwad Versus Sanjay Kundalik Gaikwad*** [Writ Petition No.3725 of 2017], dated 16.08.2017 and the judgment of this Court in ***M/s Kuber Steel Traders Versus M/s Yash Enterprises & Others*** [Writ Petition No.5650 of 2016], dated 03.07.2017 and submitted that in view of the position of law regarding compliance of provisions of Order XXXVII of the Code, the order granting unconditional leave to defend is unsustainable in law.

6. The contentions canvassed by the learned counsel for the petitioners are not controverted by the respondent who is although served with the notice of the petition.

7. While considering the controversy involved, it has to be seen that the defendant has filed application for leave to defend in which he has raised general contentions about absence of written agreement, non-compliance with the procedural requirements, absence of cause of action and inadequate particulars. However, pertinent to note, the defendant has not raised any contention about disputing the claim, much less any defence on merits. It has also to be noted that the defendant has marked his presence in the suit on 07.05.2024 whereas the application for leave to defend is filed on 11.07.2024. Thus, undisputedly, the defendant has not submitted the application within the time provided by the provisions of Order XXXVII of the Code. It is trite law that while considering the application for leave to defend the trial Court has to mainly consider as to

whether the defendant has raised any defence on merit which could be considered to be a triable issue or a substantial defence. In the instant case, a perusal of the application for leave to defend filed by the defendant shows that the defendant has made bare allegations about absence of written agreement in support of the claim, thus pointing out deficiencies in the plaint without raising any substantial defence. Under such circumstances, the trial Court has erred in concluding that the defendant has raised a triable issue and became entitled to unconditional leave to defend. Pertinent to note, the defendant-respondent has not bothered to appear in the instant petition to demonstrate availability of any triable defence.

8. Having regard to the contents of the application for leave to defend and the position of law in this regard, I am of the opinion that the defendant need to be granted conditional leave to defend by directing him to deposit 50% of the amount of claim. Hence, the following order is passed:-

- I. The writ petition is partly allowed.
- II. The order dated 14.08.2025 passed by the trial Court on the application below Exhibit 15 in Summary Civil Suit No.5 of 2024 is modified to the extent of granting unconditional leave to defend and the respondent, defendant in the suit, is permitted to defend the suit subject to deposit of 50% of the amount of claim within a period of four weeks from the date of uploading of this order.

9. Rule is made absolute in aforesaid terms. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

APTE