



2025:DHC:7947



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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CS(OS) 267/2024 and I.A. 18195/2025

Between: -

HARI VADAN KUMAR,
S/O LATE THAKOR LAL,
R/O A-39, GUJRAT APARTMENT,
PITAMPURA, DELHI-110034.

.....PLAINTIFF

(Through: Mr. Anil Goel and Mr. Aditya Goel, Adv)

AND

RAKESH KUMAR GUPTA
S/O LATE SH. MURARI LAL GUPTA,
R/O C-7, PUSHPANJALI ENCLAVE,
PITAMPURA, DELHI-110034.

.....DEFENDANT

(Through: Mr. Vipin Wason and Ms. Stuti Wason, Adv.)

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Reserved on: 18.08.2025

Pronounced on: 08.09.2025

JUDGMENT

I.A. 38637/2024 (by defendant – Order XXXVII Rule 3(5) – leave to defend.)



By way of the instant application, the defendant seeks leave to defend the present suit under Order XXXVII of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'the CPC'*)

Factual Matrix

2. The facts, as per the plaint, manifest that the plaintiff and defendant were close friends for about two decades. In April, 2015, the defendant approached the plaintiff seeking financial assistance for his commercial ventures, assuring repayment of loans with interest at 12% per annum within three months of advancement. Relying on these assurances, the plaintiff and his relatives advanced a total sum of ₹8,86,68,000/- to the defendant between June 2015 and September 2015.

3. On 10.01.2019, the plaintiff demanded repayment. The defendant, citing financial difficulties, partially repaid ₹4,00,00,000/- on 12.04.2019. On the same date, the defendant executed a Memorandum of Understanding (*hereinafter referred to as 'the MoU'*) and Indemnity Bond acknowledging the outstanding liability of ₹5,50,00,000/- towards the plaintiff and issued 22 post-dated cheques of ₹25,00,000/- each to discharge the said liability. The defendant further assured payment of interest at 18% per annum.

4. At the defendant's request, the plaintiff refrained from presenting the first fourteen cheques. However, when the subsequent four cheques were presented, the same were dishonoured with the remarks "*Account Blocked/Funds Insufficient.*" Despite service of legal notices dated 20.04.2023, 08.05.2023, 02.09.2023, 26.10.2023 and 07.02.2024, the defendant failed to make payment. According to the plaintiff, five complaints under Section 138 of the Negotiable Instruments Act, 1881



(hereinafter referred to 'the Act') have been filed against the defendant and are pending before the Judicial Magistrates at Rohini Courts, Delhi.

5. The plaintiff asserts that the defendant misrepresented his financial position, dishonestly induced the grant of friendly loans, and deliberately issued cheques without sufficient funds. The plaintiff computes the outstanding liability as Rs. 5.5 Crores (principal) and Rs. 4.9 Crores (interest at 18% p.a. from 12.04.2019 till the filing of suit), aggregating to Rs. 10.4 Crores.

Submissions advanced by the parties

6. At the outset, Mr. Vipin Wason, learned counsel for the defendant, submits that the defendant does not owe a single penny to the plaintiff. According to him, the present suit, being based on suppression of material facts and breach of contractual undertakings, is liable to dismissal with exemplary costs.

7. Additionally, Mr. Wason has broadly made the following submissions: -

- I. That the plaintiff had executed an Indemnity Bond on 23.04.2019 in favour of the defendant, acknowledging receipt of Rs. 5.5 crores in full and final settlement. Under Clause 14 of the MoU executed on the same date, the plaintiff is bound to indemnify the defendant for any excess claim. The present suit is thus barred by the said Indemnity Bond.
- II. That without prejudice to the above, the defendant submits that although the plaintiff has admitted the receipt of Rs. 4 crores prior to filing of the suit, he has deliberately suppressed the fact that an additional Rs. 5.5 crores was paid in 2019 in full and



final settlement under the MoU dated 23.04.2019. On receiving the said amount, the plaintiff returned 22 cheques to the defendant, which were later misplaced, leading to a police complaint lodged on 23.04.2019 at Rohini Sector-9, Delhi.

- III. That the plaintiff has suppressed material facts, including:
 - a. Payment of Rs. 4 crores on 12.04.2019 as recorded in the MoU.
 - b. Further payment of Rs. 5.5 crores on 23.04.2019 under a modified MoU, reducing the document to seven pages with a substituted Clause 14 stating that no further claim subsists against the Defendant.
 - c. Execution of an Indemnity Bond dated 12.04.2019 signed on 23.04.2019, confirming no dues beyond Rs. 5.5 crores.
- IV. That the plaintiff cannot resile from the contractual obligations of the MoU dated 23.04.2019, which clearly bars any claim beyond Rs. 5.5 crores. Thus, the present suit is vexatious and filed with *mala fide* intent to unjustly enrich the plaintiff in breach of the settlement.
- V. That as regards possession of 14 cheques alleged in the plaint, the plaintiff had actually received and wrongfully retained 22 cheques, despite no subsisting claim. Even if assumed *arguendo* that the plaintiff possessed these instruments, their non-presentation demonstrates the absence of any enforceable debt.



VI. Moreover, the plaintiff is neither a bank nor an NBFC and has falsely claimed interest to circumvent limitation, which is unsupported by his Income Tax Returns.

8. *Per contra*, Mr. Anil Goel, learned counsel appearing for the plaintiff through Video Conference, submits that the defendant has no defence and the application for leave to defend is frivolous, time-barred, and liable to be dismissed with exemplary costs. According to him, the defendant has admitted key facts, including his long-standing friendship with the Plaintiff, receipt of Rs. 8.86 crores as a friendly loan, repayment of Rs. 4 crores towards the plaintiff's relatives, execution of the MoU dated 12.04.2019 acknowledging liability of Rs. 5.5 crores, and issuance of 22 post-dated cheques towards the discharge of this liability. Mr. Goel submits that the defendant has not denied the dishonour of these cheques, receipt of legal notices, WhatsApp messages, audio recordings, or proceedings under Section 138 of the Act.

9. It is also submitted by learned counsel that the statutory presumption under Section 139 of the Act squarely applies. According to him, the defendant's plea of full and final settlement is false, as the 22 cheques issued under the MoU remain unpaid. It is further submitted that the alleged police complaint dated 23.04.2019 regarding missing cheques is fabricated, lacking any DD number or supporting proof. It is submitted that the MoU is a written contract for a liquidated demand, supported by admitted documents, and the defendant has failed to raise any triable issue.

10. Learned counsel further submits that the indemnity bond executed by the plaintiff only relates to amounts owed to his relatives and does not extinguish the plaintiff's independent claim of Rs. 5.5 crores. It is stated by



him that the defendant's assertions regarding cash payment, modification of Clause 14 of the MoU, or forged pages are baseless. He also states that the defendant has failed to pay even a single instalment as per the MoU, and the cheques remain dishonoured. It is further submitted that no suppression or concealment has been made by the plaintiff. According to him, the application discloses no substantial defence or triable issue warranting leave to defend, and the suit is based on admitted liability under the MoU, supported by dishonoured cheques, and therefore deserves to be decreed forthwith.

11. I have considered the submissions made by learned counsel appearing on behalf of the parties and also perused the record.

12. Before coming to the facts of the instant case, it is imperative to initially outline the framework of Order XXXVII of the CPC, its scope, and the approach adopted by Courts while considering applications seeking leave to defend under the said provision.

13. Order XXXVII of the CPC embodies a special summary procedure designed to secure swift justice in suits founded on written contracts, negotiable instruments, or other liquidated demands, where expedition is vital to commercial certainty. Its framework, particularly under Rules 2 and 3, circumscribes the Defendant's right to contest by requiring an application for leave to defend within ten days of service of summons for judgment, disclosing facts indicative of a substantial defence. The legislative design favours the grant of such leave as a norm, with refusal reserved only for cases where the proposed defence is patently frivolous, vexatious, or devoid of substance. The Court, proceeding on a *prima facie* assumption of truth in the Defendant's pleadings, may grant leave either unconditionally or on



terms it deems just, but where part of the claim is admitted, deposit of the admitted sum is a statutory precondition. Thus, this approach, to be adopted by the Courts, ensures that genuine disputes proceed to trial while guarding against dilatory or abusive tactics that undermine the integrity of speedy justice.

14. The jurisprudence surrounding the grant of leave to defend under Order XXXVII of CPC is no longer *res integra*. In *Santosh Kumar v. Bhai Mool Singh*¹, the Supreme Court ruled that when the defence raises a *bona fide* and clear triable issue, unconditional leave to defend must ordinarily be granted under Order XXXVII Rule 3(1). The Court emphasised that at the leave stage, it is sufficient if the Defendant's affidavit discloses facts which, if proved, would constitute a plausible defence; documentary proof is not mandatory at this stage. The discretion to impose conditions under Rule 3(2) is to prevent dilatory tactics, not to compel premature proof. It further held that the Trial Court and High Court erred in construing the defence as vague due to the absence of documents, resulting in an arbitrary exercise of discretion and a failure of justice. The relevant extracts are reproduced below: -

“6. At first blush, Order 37 Rule 2(2), appears drastically to curtail a litigant's normal rights in a court of justice, namely to appear and defend himself as of right, if and when sued, because it says that when a suit is instituted on a bill of exchange, hundi or & promissory note under the provisions of sub-rule (1)—

“... the Defendant shall not appear or defend the suit unless he obtains leave from a judge as hereinafter provided so to appear and defend.”

But the rigour of that is softened by Rule 3(1) which makes it obligatory on the court to grant leave when the conditions set out there are fulfilled. Clause (1) runs—

¹AIR 1958 SC 321



“The court shall, upon application by the Defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the court may deem sufficient to support the application.”

But no sooner is the wide discretion given to the court in Rule 2(2) narrowed down by R. 3(1) than it is again enlarged in another direction by R. 3(2) which says that

“Leave to defend may be given unconditionally or subject to such terms as to payment into court, giving security, framing and recording issues or otherwise as the court thinks fit.”

*The learned counsel for the Plaintiff argues that the discretion so conferred by R. 3(2) is unfettered and that as the discretion has been exercised by the learned trial Judge, no appeal can lie against it unless there is a “grave miscarriage of justice or flagrant violation of law” and he quotes *D.N. Banerji v. P.R. Mukherjee* [(1952) 2 SCC 619 : (1953) SCR 302, 305] and *Waryam Singh v. Amarnath* [(1954) SCR 565] .*

*Now what we are examining here are laws of procedure. The spirit in which questions about procedure are to be approached and the manner in which rules relating to them are to be interpreted are laid down in *Sangram Singh v. Election Tribunal, Kotah, Bhurey Lal Baya* [(1955) 2 SCR 1, 8, 9] .*

“Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.”



Applied to the present case, these observations mean that though the court is given a discretion it must be exercised along judicial lines, and that in turn means, in consonance with the principles of natural justice that form the foundations of our laws. Those principles, so far as they touch the present matter, are well known and have been laid down and followed in numerous cases.

*7. The decision most frequently referred to is a decision of the House of Lords in England where a similar rule prevails. It is *Jacobs v. Booth's Distillery Company* [(1901) 85 LT 262] . Judgment was delivered in 1901. Their Lordships said that whenever the defence raises a “triable issue”, leave must be given, and later cases say that when that is the case it must be given unconditionally, otherwise the leave may be illusory. See, for example, *Powszechny Bank Zwiaskowy W. Polsce v. Paros* [(1932) 2 KB 353] in England and *Sundaram Chettiar v. Valli Ammal* [(1935) ILR 58 Mad 116] in India. Among other cases that adopt the “triable issue” test are *Kiranmoyee Dassi v. J. Chatterjee* [(1945) 49 CWN 246] and *Gopala Rao v. Subba Rao* [AIR (1936) Mad 246] .*

*The learned counsel for the Plaintiff-respondent relied on *Gopala Rao v. Subba Rao* [AIR (1936) Mad 246] , *Manohar Lal v. Nanhe Mal* [AIR 1938 Lah 548] , and *Shib Karan Das v. Mohammed Sadiq* [AIR 1936 Lah 584] . All that we need say about them is that if the court is of opinion that the defence is not bonafide, then it can impose conditions and is not tied down to refusing leave to defend. We agree with *Varadachariar, J.*, in the Madras case that the court has this third course open to it in a suitable case. But it cannot reach the conclusion that the defence is not bona fide arbitrarily. It is as much bound by judicial rules and judicial procedure in reaching a conclusion of this kind as in any other matter. It is unnecessary to examine the facts of those cases because they are not in appeal before us. We are only concerned with the principle.*

*8. It is always undesirable, and indeed impossible, to lay down hard and fast rules in matters that affect discretion. But it is necessary to understand the reason for a special procedure of this kind in order that the discretion may be properly exercised. The object is explained in *Kesavan v. South Indian Bank Ltd.* [ILR 1950 Mad 251] , and is examined in greater detail in *Sundaram Chettiar v. Valli Ammal* [(1935) ILR 58 Mad 116] to which we have just referred. Taken by and large, the object is to see that the Defendant does not unnecessarily prolong the litigation and prevent the Plaintiff from obtaining an early decree by raising untenable and frivolous defences in a class of cases where speedy decisions are desirable in the interests of trade and commerce. In general, therefore, 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.”

15. In ***Raj Duggal v. Ramesh Kumar***², the Supreme Court further emphasised that the test for grant of leave to defend hinges on whether the defence raises a real, honest, and *bona fide* dispute, warranting trial. The presence of a triable issue, or even a fair dispute, necessitates that leave not be refused. The relevant extract reads 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.”

16. Furthermore, in ***IDBI Trusteeship Services Ltd. v. Hubtown Ltd.***³ the Supreme Court has extensively considered the amendment of Order XXXVII of CPC in the year 1976. While considering pre-amendment and post-amendment provisions of Order XXXVII Rule 3 of CPC, the Court found that the discretion that the Court exercises under Order XXXVII of CPC in refusing the leave to defend or to grant conditional or unconditional

² AIR 1990 SC 2218

³ (2017) 1 SCC 568



leave to defend is discretion akin to *Joseph's multi-coloured coat* – in the sense that it encapsulates a number of possibilities. However, the Court emphasised the need for laying down guidelines or principles so that the exercise of discretion must be informed and the exercise of judicial discretion in an arbitrary manner is obviated. The Court, therefore, emphasised that the defences have to be guided by broad principles, which are ultimately to be applied by the Courts, so that justice is done on the facts of each given case. In paragraph 17 of the aforementioned decision, the Supreme Court has laid down the following broad principles:-

“17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36] , 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.”*

17. In ***B.L. Kashyap & Sons Ltd. v. JMS Steels & Power Corpn.***,⁴ the Supreme Court, while elucidating the governing principles for grant of leave to defend under Order XXXVII of CPC, observed that denial of leave is justified only where the defence is frivolous or vexatious, whereas the existence of reasonable doubt may warrant imposition of conditions. Noting that Defendant No. 2 had raised *bona fide* triable issues as to his liability, the Court set aside the findings of the courts below in so far as they pertained to him, granted conditional leave to defend on the strength of the deposit already made, and directed the Trial Court to proceed with the trial *qua* Defendant No. 2 in accordance with law. In paragraph no.33 of the aforementioned decision, the Supreme Court has made the following observations:-

“33. It is at once clear that even though in IDBI Trusteeship⁴, this Court has observed that the principles stated in para 8 of Mechelec Engineers case 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

⁴ (2022) 3 SCC 294



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.”

18. Reference can also be made to the recent decisions of this Court in ***Vidya Projects Private Limited v. Essel Infraprojects Limited & Ors.***⁵ and ***Rama Luthra v. Deepali Malik & Ors***⁶, wherein the Court undertook a detailed exposition of the principles governing adjudication under Order XXXVII of CPC. It was copiously reiterated that the remedy of a summary suit, though designed to ensure expeditious disposal of claims, cannot be interpreted to imply that leave to defend is to be denied as a matter of course. On the contrary, the Court observed that the grant of leave to defend is the rule, and its denial the exception.

19. The Court further clarified that where a defendant discloses facts that indicate a fair, *bona fide*, or reasonable defence raising triable issues, unconditional leave must ordinarily follow. Even where there exists some uncertainty or doubt as to the tenability of the defence, the appropriate course is to grant a conditional leave rather than to shut the door on adjudication altogether. Such conditions may involve the deposit of an admitted amount, furnishing of security, or compliance with procedural directives aimed to secure the plaintiff's interest while preserving the defendant's right to contest.

20. It was also reiterated that outright refusal of leave to defend is warranted only in cases where the proposed defence is manifestly frivolous, vexatious, or a mere sham, incapable of raising any genuine issue worthy of trial. Additionally, the Court also considered the decision of the Supreme

⁵ 2025 : DHC: 7172

⁶ 2025: DHC:7376



Court in *Rahul S. Shah vs. Jinendra Kumar Gandhi and Others*,⁷ emphasizing that Courts, even while granting leave, may demand disclosure of assets or require security to safeguard the eventual satisfaction of a decree in money suits. This doctrinal approach balances commercial expediency with fairness by ensuring that genuine disputes proceed to trial, while also discouraging abuse of process through frivolous or dilatory defence.

21. Having understood the jurisprudence surrounding the concept of leave to defend in a summary suit under Order XXXVII of CPC, the Court shall now examine whether the present application discloses a reasonable defence or not.

22. The issue stems from the grant of financial assistance by the plaintiff to the defendant, purportedly sharing a friendly relationship, of a sum of Rs. 8.86 crores. The defendant's case is that the entire liability towards the plaintiff was discharged on 12.04.2019 and 23.04.2019 in two instalments of Rs. 4 crores and Rs. 5.5 crores respectively. Although, the receipt of Rs. 4 crores on 12.04.2019 is an admitted position, however, the plaintiff has asserted that the said amount was paid towards the dues payable to his relatives. The plaintiff's case is that *qua* the outstanding component of Rs. 5.5 crores, the defendant merely handed over 22 cheques and the said amount was never cleared. Furthermore, some of the cheques also came to be dishonoured upon presentation. Contrarily, the defendant's case is that the remaining component of Rs. 5.5 crores was paid to the plaintiff on 23.04.2019 and in lieu of the said receipt, an MoU was executed by the parties and an indemnity bond was also executed by the plaintiff admitting no further liability. As per the plaintiff, this indemnity bond was executed

⁷ (2021) 6 SCC 418



towards the amount payable to his relatives and not qua the defendant's independent liability of Rs. 5.5 crores towards the plaintiff.

23. A plain scrutiny of the respective versions of the parties herein indicates that the parties are at significance variance with each other on material aspects of the case and the versions are irreconcilable. The submission on behalf of the plaintiff that the defendant has substantially admitted the plaintiff's case is completely unfounded from the facts on record. Pertinently, the facts forming part of the present application unequivocally reveal a plausible defence. The defendant has certainly raised triable issues pertaining to the quantum of outstanding liability, making of final payment on 23.04.2019, execution of MoU *qua* the payment dated 23.04.2019 as well as the execution of indemnity bond by the plaintiff. Contrarily, the plaintiff has relied upon a different indemnity bond dated 12.04.2019, purportedly executed by the defendant undertaking to repay the outstanding liability of Rs. 5.5 crores. If the said amount was subsequently repaid by the defendant on 23.04.2019, as claimed, and a subsequent indemnity bond was indeed executed by the plaintiff undertaking not to claim any amount from the defendant beyond Rs. 5.5 crores, the entire cause of action in the present suit would fail. The divergent versions of the parties also reveal that the legal implications of the MoU and indemnity bond have been perceived differently by the parties and therefore, legitimate triable issues emerge in the matter which would have a direct bearing on the factum of payment, if any, as well as on the outcome of the suit itself.

24. The suit of the plaintiff is also not eligible to be decreed forthwith for the reason that the nature of financial assistance appears to be unclear. The plaint discloses that the loan advanced to the defendant was payable with



interest @12% per annum. The said loan was advanced between June, 2015 to September, 2015, and was payable within three months. However, the same was partially repaid only on 12.04.2019 and as per the settlement between the parties, the remaining component was payable @18% per annum. Alongside this position, it has been submitted on behalf of the plaintiff that the loan advanced by him was a friendly loan. If such was the case, there would have been no question of interest. Thus, the nature of advancement also becomes a matter of careful examination, especially in light of the contention of the defendant that the plaintiff had no legal entitlement to advance any loan with interest.

25. As regards the cheques in question, again, the versions of the parties are at significant variance. Whereas, the plaintiff asserts that the cheques were given in lieu of the outstanding liability of Rs. 5.5 crores, the defendant asserts that the cheques were misused by the plaintiff despite receipt of entire payment on 23.04.2019, and a complaint regarding the loss of cheques has been lodged with the jurisdictional police station.

26. However, it is also pertinent to note that the deposition of the plaintiff in his evidentiary affidavit (Ex. CW1/A) before the NI Court, relied upon by the defendant as Document No. 1 in his application for additional documents, reveals several material admissions that raise triable issues. The plaintiff admitted that a sum of Rs. 4 crores was allegedly returned by the defendant in cash in April 2019, though he could not recall the exact date, denominations, or issue of any receipt. He further acknowledged that neither this repayment nor the interest of approximately ₹63.32 lakhs received from the defendant was disclosed in his Income Tax Returns. These admissions of



cash transactions cast doubt on the exact quantum of liability and call for a further examination at trial.

27. In view of this discussion, the Court is of the considered opinion that the facts forming part of the present application reveal a substantial defence and give rise to various triable issues, which could only be determined after affording an opportunity to the parties to lead evidence during trial. It is not a case wherein the defence could be termed as vexatious or frivolous. More so because the defence is purportedly supported by independent documents which ought to be tested against the documents relied upon by the plaintiff during appreciation of evidence. It is necessary to note that the whole basis of liquidated demand made by the plaintiff in the present suit stands countered by the documents sought to be relied upon by the defendant. In such a scenario, the determination of truth rests only upon a fair trial with equal opportunity to both sides and after sifting through their evidence.

28. Therefore, it would be wholly in the interest of fairness and reasonableness if the defendant is permitted to contest the suit. Since, the defence appears to be a reasonable one, this Court is not inclined to impose any condition and in view of the position of law discussed above, the defendant is entitled to the grant of an unconditional leave to defend the suit. It is also made clear that since there is no admission on the part of the defendant of any amount which is due from his side, the second proviso to sub-rule (5) of Rule 3 of Order XXXVII of CPC shall not be attracted.

29. Accordingly, the present application is allowed. The suit shall proceed as ordinary suit, and nothing observed herein shall be construed as an expression on the merits of the suit.



2025:DHC:7947



30. Needless to state, the factual examination herein has been done solely for the disposal of the present application and only to the extent necessary.

31. The present application is, accordingly, disposed-of.

I.A. 18195/2025(by def - For Production Of Additional Documents)

1. For the reasons stated in the instant application, the same stands allowed.

2. The application stands disposed of.

CS(OS) 267/2024

1. Since the defendant herein has claimed that a cash transaction was made by him to the plaintiff, exceeding the limit of Rs 2,00,000/-, it is deemed appropriate to refer the instant matter to the Jurisdictional Income Tax Authority, in accordance with guidelines laid down by the Supreme Court in *RBANMS Educational Institution v. B. Gunashekar*.⁸

2. Let the matter to continue to proceed before the concerned Joint Registrar on 15.10.2025.

3. Thereafter, list before the Court on the date to be assigned by the concerned Joint Registrar.

**(PURUSHAINDRA KUMAR KAURAV)
JUDGE**

SEPTEMBER, 08, 2025

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⁸ 2025 SCC OnLine SC 793