



2025:DHC:8437



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

+ **CS(OS) 123/2024 and CRL.M.A. 36419/2024**

Date of Decision: **17.09.2025**

IN THE MATTER OF:

**1. RAMESH PAL BHATIA
(DECEASED THROUGH LEGAL HEIRS)**

(i) USHA BHATIA (Aged about 73 years)

W/o Lt. Sh. Ramesh Pal Bhatia

(ii) HEMANT KUMAR BHATIA (Aged about 50 years)

S/o Lt. Sh. Ramesh Pal Bhatia

Both R/o C-3/25, Rajouri Garden,

New Delhi-110027

(iii) VANDANA BHATIA (Aged about 46 years)

D/o Lt. Sh. Ramesh Pal Bhatia

W/o Sh. Sandeep Bhatia

R/o G-6/B, Mansarover Garden,

Ramesh Nagar,

New Delhi-110015

Also at:- C-3/25, Rajouri Garden,

New Delhi-110027

2. HEMANT KUMAR BHATIA

S/o Sh. Ramesh Pal Bhatia

R/o C-3/25, Rajouri Garden,

New Delhi-110027

.....PLAINTIFFS

Through: Mr.Rajeev Saxena, Sr. Advocate with
Mr. Joginder, Ms.Joshini, Ms.Taniya
and Mr. Amarjeet, Advocates.



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versus

1. **ROHIT BHATIA**
S/o Lt. Sh. Bharat Bhushan Bhatia
R/o B-27A, Street No.7,
Dashrathpuri,
Dwarka, New Delhi-110045

2. **BHAWANA BHATIA**
W/o Sh. Rohit Bhatia
D/o Sh. Sudhir Sharma
R/o B-27A, Street No.7,
Dashrathpuri, Dwarka,
New Delhi-110045

Also, at:

D-52, Gali No. 8A,
Dashrathpuri, New Delhi-110045

.....DEFENDANTS

Through: Mr.Rakesh Wadhwa and Mr. Sahil
Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

J U D G E M E N T

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

I.A. 2204/2025 (under Order XXXVII Rule 3(5) of CPC)

1. The applicant, *vide* the instant application prays for the following reliefs:-

“(i) grant unconditional leave to the Defendants/ Applicants to defend the present suit;



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(ii) any other or further relief(s) as this Hon'ble Court may deem fit, just or expedient in the facts and circumstances of the case may be granted in favour of the Defendants/Applicants and against the Plaintiffs.”

2. Mr. Rajeev Saxena, learned senior counsel for the plaintiffs submits that the plaintiff nos.1 (i) to (iii) and 2 are the legal heirs of the original plaintiff, namely late Ramesh Pal Bhatia and has instituted the instant civil suit under Order XXXVII of the Code of Civil procedure, 1908 (CPC) seeking recovery of Rs.2.15 Crores.

3. It is the case of the plaintiffs that between July 2022 and November 2022, late Ramesh Pal Bhatia extended financial assistance to Defendant No.1, partly in cash and partly through banking channels. Defendant No.2, wife of Defendant No.1, has also been benefitted from the said transactions.

4. It is submitted that there are series of receipts purportedly signed by Defendant No.1, as also a transaction through RTGS for a sum of Rs. 50 lakhs. It is also submitted on behalf of the plaintiffs that the repayment has not been made and therefore, the suit has been instituted.

5. *Per contra*, by way of the instant application, Mr.Rakesh Wadhwa, learned counsel for the defendants contends that the suit itself is not maintainable, in as much as, the receipts relied upon are unstamped, unregistered, forged and fabricated. According to him, at the time of filing of the civil suit, Mr. Ramesh Pal Bhatia was on the death bed and was admitted in the ICU and his thumb impression was obtained and on the date of issuance of summons, he had already died. It is, for this reason, thereafter, certain pleadings were amended. It is also stated in the application that there are various contraventions in the receipts and their content.

6. According to Mr. Wadhwa, in instant suit, an amount of Rs.2.15



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Crores is sought to be recovered, whereas, in the legal notice, the amount was mentioned as Rs.2.14 crores. He further submits that in a complaint made to the police authorities, the amount as was claimed was Rs.3 Crores.

7. He, therefore, contends that even otherwise, there is no proof of the payment made to the Defendants and the cash transaction, if any, violates the provisions of Section 269 of the Income Tax Act, 1961. Learned counsel for the Defendants has also raised other various objections in his application and has stated that the unconditional leave to defend be granted.

8. In response to the submissions made by Mr. Wadhwa, Mr. Saxena, learned senior counsel for the plaintiff submits that the defendants do not have any possibility to succeed in their defence and according to him, in acknowledgment of the debt, a sum of approx Rs.13 Lakhs has been claimed to have been paid by the defendants to the plaintiff.

9. This itself, according to him, establishes the case of the plaintiff; and therefore, a false and fabricated plea has been raised in the defence. It is contended that the debt was admitted and in view of the decision passed by the Supreme Court in the case of *Mechalec Engineers & Manufacturers v. Basic Equipment Corporation*¹ and *Vishal Kapoor v. Sonal Kapoor*², the sham or illusory defences do not entitle a defendant to leave to defend.

10. Additionally, Mr. Saxena, learned senior counsel for the plaintiff also places reliance on the decision of this Court in the case of *Vidya Projects Private Limited vs. Essel Infraprojects Limited and Ors.*³.

11. I have heard learned counsel appearing for the parties and have perused the record.

¹ AIR 1977 SC 577

² 2014 SCC OnLine Del 4484



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12. The law with respect to grant of leave to defend against suit instituted under Order XXXVII of the CPC, is no longer *res integra*. The framework, specifically 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.

13. In *IDBI Trusteeship Services Ltd. v. Hubtown Ltd.*,⁴ 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 leave to defend is discretion akin to *Joseph's multi-coloured coat* – in the sense that it encapsulates a number of possibilities. 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:

³ 2025:DHC:7172

⁴ (2017) 1 SCC 568



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.”*

14. In ***B.L. Kashyap & Sons Ltd. v. JMS Steels & Power Corpn.***,⁵ 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. In

⁵ (2022) 3 SCC 294



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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 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.”

15. Reference can also be made to the recent decisions of this Court in ***Vidya Projects Private Limited v. Essel Infraprojects Limited & Ors.***⁶ and ***Rama Luthra v. Deepali Malik & Ors***⁷, 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.

16. The Court further clarified 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

⁶ 2025 : DHC: 7172



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of security, or compliance with procedural directives aimed to secure the plaintiff's interest while preserving the defendant's right to contest.

17. 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 Court in *Rahul S. Shah vs. Jinendra Kumar Gandhi and Others*,⁸ 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.

18. If the facts of the present case are examined on the anvil of the aforesaid legal position, the same would indicate that the primary question in the instant case as to whether the defendants have disclosed a substantial defence raising triable issues, or whether the pleas are sham and illusory.

19. It is seen that the allegations of receipts executed after the death of plaintiff No.1, purchase of court fee stamps in his name posthumously, thumb impressions despite literacy, and contradictions between the legal notice and plaint, are serious matters which go to the root of the Plaintiffs' claim. Such issues cannot be brushed aside at the threshold.

20. Moreover, the admission of a Rs. 50 lakh loan by the defendants cannot be read in isolation. It is a qualified admission coupled with assertions of pledge of gold ornaments worth more than the loan amount,

⁷ 2025: DHC:7376

⁸ (2021) 6 SCC 418



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and partial repayment. Such defence, if established, would materially affect the quantum of liability, and therefore cannot be termed as illusory.

21. Applying the law laid down in *IDBI Trusteeship Services Ltd.* and *B.L. Kashyap* and the decisions rendered by this Court, it is found that once the defense discloses facts which, if proved, would disentitle the Plaintiff to a decree in entirety or in part, leave to defend must ordinarily be granted.

22. In the present case, the defence cannot be characterised as sham or moonshine. On the contrary, the pleas of forgery, fabrication, procedural impropriety and part repayment constitute triable issues, requiring adjudication.

23. More importantly, since, the defendants have admitted the loan of Rs.50 Lakhs as against some Gold ornaments, and thereafter have also paid a sum of Rs 13 lakhs to the plaintiff, in view thereof, to the extent of at least the difference of the aforesaid amount, the rights of the plaintiffs will have to be protected.

24. In view of the above, the defendants are entitled to conditional leave to defend the present suit.

25. Therefore, the defendants are directed to furnish appropriate surety to the tune of Rs.37 lakhs before the concerned Joint Registrar within a period of thirty (30) days from today.

26. Needless to state, the observations made in this order is only for the purpose of the adjudication of the instant application and the same will have no bearing on the merits of the matter at the final stage.

27. With the aforesaid observations, the instant application stands disposed of.

CS(OS) 123/2024 and CRL.M.A. 36419/2024



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1. Let the matter be listed before the concerned Joint Registrar for completion of pleadings in accordance with extant rules on 26.09.2025.
2. Let the hearing of the suit be expedited.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 17, 2025

Nc/mj