



2025:DHC:7172



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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **CS(COMM) 501/2024, I.A. 5462/2025, I.A.18261/2025**

Between: -

VIDYA PROJECTS PRIVATE LIMITED
(THROUGH ITS AUTHORIZED REPRESENTATIVE)
GALI NO. 4, PATEL NAGAR
NEAR POLICE NAKKA
RATHDHANA ROAD,
SONEPAT,
HARYANA – 131001

ALSO AT:

GALI NO. 3, VIKAS NAGAR
NEAR UNIQUE GARDEN
MURTHAL ROAD
SONEPAT
HARYANA - 131001

.....PLAINTIFF

(Through: Mr. Kamal Mehta and Mr. Nishant Mankoo, Advocates.)

AND

ESSEL INFRAPROJECTS LIMITED
(THROUGH ITS MANAGING DIRECTOR)
513/A, 5h FLOOR
KOHINOOR CITY, KIROL ROAD,
KURLA (WEST), MUMBAI,
MAHARASHTRA – 400070

ALSO AT:



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PLOT NO. 19 85 20, 6th FLOOR,
FILM CITY
SECTOR -16A
NOIDA-201301
UTTAR PRADESH

ALSO AT:

413-414, SHARMJEVAN
B-5, OPP, LODHA NEW CUFFE PARADE
WAD ALA-EAST
MUMBAI CITY,
MAHARASHTRA-400037

PAN INDIA INFRAPROJECTS LIMITED

(THROUGH LIQUIDATOR-APPOINTED BY HON'BLE
NCLT)

377 NAKSHATRA, AMBAZARI ROAD,
GANDHINAGAR, NAGPUR. 440010

ALSO AT:

513/A, 5TH FLOOR
KOHINOOR CITY, KIROL ROAD,
KURLA (WEST), MUMBAI,
MAHARASHTRA – 400070

MUKARBA CHOWK PANIPAT TOLL ROADS LIMITED

(THROUGH ITS MANAGING DIRECTOR)

513/A, 5TH FLOOR
KOHINOOR CITY, KIROL ROAD,
KURLA (WEST), MUMBAI,
MAHARASHTRA – 400070

ALSO AT:

PLOT NO. 19 85 20, 6th FLOOR,
FILM CITY
SECTOR -16A
NOIDA-201301
UTTAR PRADESH



WELSPUN INFRA FACILITY PRIVATE LIMITED
(THROUGH ITS MANAGING DIRECTOR)
T-11, 3RD FLOOR,
VASANT SQUARE MALL
SECTOR-B POCKET-V
VASANT KUNJ
NEW DELHI-110070

ALSO AT:
WELSPUN CITY, VILLAGE VERSAMEDI,
TALUKA ANJAR, DISTRICT KUTCH
GUJARAT-370110

.....DEFENDANTS

(Through: Mr. Monish Panda and Mr. Anmool Jassal, Advocates for D-4.)

% Reserved on: 01.08.2025
Pronounced on: 19.08.2025

JUDGMENT

I.A. 8819/2025 (by D-4 under Order XXXVII Rule 3(5) of CPC)

By way of the instant application, Defendant No. 4 seeks unconditional leave to defend the present suit.

2. The instant suit is under Order XXXVII of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) for recovery of Rs 4, 10, 00,000/-, along with past, *pendente lite*, and future interest.

Submissions advanced by the parties

3. Mr. Monish Panda, learned counsel for Defendant No.4, submitted that the suit is misconceived and not maintainable. He further contends that



the Plaintiff is not entitled to any summary judgment against Defendant No.4.

4. Learned counsel for Defendant No.4 further makes the following submissions:

- (i) There exists no privity of contract between the Plaintiff and Defendant No.4 as it has neither undertaken nor agreed to make any payment to the Plaintiff or satisfy any alleged claim.
- (ii) The plaint discloses no cause of action against Defendant No.4, rendering the suit, as against Defendant No.4, non-maintainable.
- (iii) Any claim of the Plaintiff, if at all, lies against Defendant Nos.1 to 3 and Defendant No.4 is neither a necessary nor a proper party.
- (iv) The Plaintiff had invoked Section 11 of the Arbitration and Conciliation Act, 1996 for the appointment of an arbitrator, which was later withdrawn.
- (v) The suit is barred by limitation and the Plaintiff has filed a misconceived application under Section 14 of the Limitation Act seeking exclusion of time spent in the Section 11 proceedings.
- (vi) Defendant No.4 is not a party to the alleged substitution and settlement agreement dated 25.06.2020; any agreement between Defendant No.4, Defendant No.3, and National Highway Authority of India (*hereinafter referred to as 'NHAI'*) is independent, and no rights flow to the Plaintiff therefrom.
- (vii) Reliance is placed on the decisions of the Supreme Court in the



cases of '*Essar Oil Limited Vs. Hindustan Shipyard Limited*¹', '*IDBI Trusteeship Services Limited vs. Hubtown Limited*²' and '*B.L. Kashyap and Sons Limited vs. JMS Steels and Power Corporation and Another*³'.

5. He prays that, in view of the facts of the present case, Defendant No.4 be granted unconditional leave to defend as there exists a substantial and bona fide defence, indicating a strong likelihood of success in the suit.

6. The aforesaid submissions are vehemently opposed by Mr. Kamal Mehta, learned counsel for the Plaintiff.

7. Mr. Mehta, learned counsel for the Plaintiff has made the following broad submissions:-

- (i) In the Business Transfer Agreement (*hereinafter referred to as BTA*) dated 08.06.2020, under the heading of "current liabilities," the specific amount owed to the Plaintiff was explicitly acknowledged and assigned to Defendant No.4.
- (ii) Clauses 1.3 and 1.4 of the BTA, which deal with "*Assumed Contracts*" and "*Assured Liabilities*" respectively, unequivocally establish that certain rights and liabilities, including the Plaintiff's claim, were transferred and vested in Defendant No.4, thereby entitling the Plaintiff to seek enforcement of the agreed terms against the concerned Defendant.

¹(2015) 10 SCC 642

²(2017) 1 SCC 568

³(2022) 3 SCC 294



- (iii) While clarifying that the Plaintiff does not oppose the grant of leave to defend in principle, he stresses that such leave should be made conditional on securing the admitted sum of Rs.4,10,00,000/- from Defendant No.4. He explains that from the total admitted liability of Rs.6,10,00,000/-, Defendant No.4 has already made a part-payment of Rs.2,00,00,000/- which itself is an acknowledgment of liability. Therefore, Defendant No.4 cannot now disown or avoid its obligation to pay the balance amount.
- (iv) He submits that the payment of Rs.2,00,00,000/-by Defendant No.4 to the Plaintiff serves as concrete proof that the BTA dated 08.06.2020 has been acted upon, at least in part, and that the performance under this agreement is not merely theoretical but has been practically implemented to some extent.
- (v) Reliance has been placed on the decision of the Supreme Court in the case of ***Rahul S. Shah vs. Jinendra Kumar Gandhi and Others***⁴,to reiterate that Defendant no.4 be directed to file an affidavit of assets and liabilities, in addition to the condition of deposition of the disputed amount.

8. In rejoinder submissions, Mr. Panda, learned counsel for Defendant no.4 submits that Defendant no.4 is a listed company and has a market capitalization of Rs. 3000 Crores. Hesubmits that there are no reasons to apprehend any flight risk of the said Defendant, so as to render the judgment and decree unexecutable. He also explained that in order to discharge the

⁴ (2021) 6 SCC 418



liability under the BTA, certain payments were made, and the same cannot be construed to be unequivocal to the extent of admitting the entire sum, as claimed. He further explained the chain of circumstances resulting in the payment of Rs.2,00,00,000/-.

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

10. Before delving into the factual matrix of the case, it is imperative to first outline the framework of Order XXXVII of the CPC, its scope, and the slant adopted by Courts while considering applications seeking leave to defend under the said provision. A foundational understanding is essential to appreciate the legal strictures within which such applications are to be adjudicated.

Scope of Sub-Rule 5 of Rule 3 of Order XXXVII of CPC

11. The object of the summary procedure enshrined under Order XXXVII of the CPC is to provide a swift and efficacious remedy in specific classes of suits, predominantly involving commercial transactions. The legislature, drawing upon long-standing experience and established practices, incorporated this special procedure to address litigation arising from written contracts, bills of exchange, promissory notes, and other documents involving liquidated amounts. In commercial hubs, where monetary liquidity and transactional certainty are vital, prolonged litigation can significantly hamper business operations. Therefore, the legislative intention behind this summary mechanism is to expedite the resolution of suits where the Plaintiff's claim is based on an ascertained sum and the Defendant does not appear to possess a substantial or *bona fide* defence.



12. Principally, the object is to ensure that the Defendant does not unduly prolong litigation or frustrate the Plaintiff's right to obtain an early decree by raising frivolous, vexatious, or untenable defences, particularly in cases where expedition is of paramount importance to the interests of trade and commerce. The very structure of Order XXXVII of CPC is premised on the legislative belief that in a certain category of claims, delays are not only detrimental to individual litigants but corrosive to the commercial fabric at large.

13. The procedural framework under Rules 2 and 3 of Order XXXVII of CPC governs the initiation and conduct of such suits. Rule 2 provides that upon the institution of the suit and issuance of summons, the Defendant is required to enter an appearance within the stipulated period. Upon such appearance, the Plaintiff must serve a summons for judgment. Crucially, the Defendant is not entitled to defend the suit unless he seeks and is granted leave to defend by the Court. In the absence of such leave, the Plaintiff is entitled to a decree as prayed for, which is executable forthwith. Rule 3 of Order XXXVII of CPC is extracted as under: -

[3. Procedure for the appearance of Defendant—(1) In a suit to which this Order applies, the Plaintiff shall, together with the summons under rule 2, serve on the Defendant a copy of the plaint and annexure thereto and the Defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the Defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the Defendant to the Plaintiff's pleader, or, if the



Plaintiff sues in person, to the Plaintiff himself, either by noticedelivered at or sent by a pre-paid letter directed to the address of the Plaintiff's pleader or of the Plaintiff,as the case may be.

(4) If the Defendant enters an appearance, the Plaintiff shall thereafter serve on the Defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed fromtime to time, returnable not less than ten days from the date of service supported by an affidavit verifyingthe cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The Defendant may, at any time within ten days from the service of such summons for judgment,by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, applyon such summons for leave to defend such suit, and leave to defend may be granted to himunconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosedby the Defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the Defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the Plaintiff is admitted by the Defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the Defendant in Court.

(6) At the hearing of such summons for judgment,—(a) if the Defendant has not applied for leave to defend, or if such application has been made andis refused, the Plaintiff shall be entitled to judgment forthwith; or (b) if the Defendant is permitted to defend as to the whole or any part of the claim, the Court orJudge may direct him to give such security and within such time as may be fixed by the Court or Judgeand that, on failure to give such security within the time specified by the Court or Judge or to carry outsuch other directions as may have been given by the Court or Judge, the Plaintiff shall be entitled tojudgment forthwith.

(7) The Court or Judge may, for sufficient cause shown by the Defendant, excuse the delay of the Defendant in entering an appearance or in applying for leave to defend the suit.]”

14. The provisions of Sub-rule 5 of Rule 3 of Order XXXVII of CPC would provide *inter alia* that the Defendant may, at any time within ten (10) days from the service of such summons for judgment, by affidavit or otherwise, disclose such facts as may be deemed sufficient to entitle him to



defend, and apply on such summons for leave to defend such suit. Such leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just.

15. The provisions of Sub-rule (5) of Rule 3 of Order XXXVII of the CPC lay down the procedural framework governing a Defendant's right to seek leave to defend a summary suit. This provision empowers the Defendant to apply for such leave, either by affidavit or otherwise, within ten days from the service of summons for judgment. The application must disclose such facts that, if established, would entitle the Defendant to defend the suit. Upon such an application, the Court may grant leave either unconditionally or subject to such terms as it deems just and reasonable.

16. The first proviso to Sub-rule 5 underscores the principle that leave to defend shall not be refused unless the Court is satisfied that the defence proposed is neither substantial nor genuine. It explicitly safeguards the Defendant from a summary dismissal of the defence, unless it is clearly frivolous or vexatious. Thus, a *prima facie* credible defence must be afforded an opportunity to be presented and adjudicated. It is of significance to note that in the adjudication of a leave to defend application, the Court has no opportunity to enter into any appreciation of evidence, which may be led by the parties during the trial. The scope of this adjudication is itself of a summary character, largely based on the facts pleaded by the parties. The determination as to whether the defence disclosed by the defendant is substantial or vexatious or frivolous, is to be based on a *prima facie* appreciation of the facts and on an assumption of the truthfulness of the foundational facts forming the basis of such defence. The phrase used in the



first proviso “*unless the Court is satisfied that the facts disclosed by the Defendant do not **indicate** that he has a substantial defence*” also signifies that the facts in a leave to defend application are merely required to “*indicate*” towards a substantial defence. Thus, the bar for allowing a leave to defend is not set at any exceptionally high pedestal.

17. The second proviso introduces a qualifying condition i.e. where the Defendant admits a part of the amount claimed by the Plaintiff to be due, leave to defend shall not be granted unless the admitted sum is deposited in Court. This serves as a safeguard against misuse of the grant of leave by Defendants who, while acknowledging liability to some extent, seek to avoid or delay payment.

18. A cumulative reading of Sub-rule (5) and its provisos reveals that the overarching scheme of Order XXXVII favours the grant of leave to defend as a norm, with its refusal being an exception based on the parameters of non-disclosure of substantial defence, vexatiousness, and frivolousness of the defence. The Court is vested with the discretion to grant leave unconditionally or upon terms it considers just, thereby balancing the need for expediency with the demands of fairness. However, this discretion is restricted where the Defendant admits part of the claim. In such cases, the statute mandates that the admitted amount must first be deposited in Court, failing which the leave to defend cannot be granted.

19. This ensures that the summary procedure retains its integrity by filtering out defences that lack substance while simultaneously allowing genuine disputes to proceed to trial under appropriate safeguards.



Judicial discourse on the leave to defend in summary suits

20. The jurisprudence surrounding the grant of leave to defend under Order XXXVII is fairly trite.

21. In *Santosh Kumar v. Bhai Mool Singh*⁵, 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 Supreme Court set aside the impugned orders and remanded the case for trial, awarding costs to the appellants. 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—

⁵AIR 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.”

22. While relying on the aforesaid decision, the Supreme Court in ***Machalec Engineering & Manufacturing v. Basic Equipment Corporation***,⁶ held that Order XXXVII of CPC, as it then stood, enjoins upon the Court to grant leave, upon application by the Defendant to seek leave to appear and to defend the suit, upon facts “*which disclose such facts as would make it incumbent on the holder to prove consideration on such other facts as the Court may deem sufficient to support the application*”.

23. In ***Raj Duggal v. Ramesh Kumar***⁷, the Supreme Court further emphasised that the test for granting 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

⁶(1976) 4 SCC 687

⁷ AIR 1990 SC 2218



Defendant merely because of its inherent implausibility or its inconsistency.”

24. In ***IDBI Trusteeship Services Limited***, 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 in refusing the leave to defend or to grant conditional or unconditional leave to defend is a discretion akin to *Joseph’s multi-coloured coat* – in the sense that it encapsulates a number of possibilities. The Court noted that the life of the law, not being logic but the experience of the trial Judge, is what comes to the rescue in these cases. However, the Court underscored 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 also observed that at one end of the spectrum is unconditional leave to defend, granted in all cases which present a substantial defence and at the other end of the spectrum are frivolous or vexatious defences, leading to refusal of leave to defend. In between these two extremes are various kinds of defences raised, which yield conditional leave to defend in most cases. The Court, therefore, emphasised that the defences have to be guided by broad principles, which are ultimately applied by the trial Judge, 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. It is thus clear that O.XXXVII has suffered a change in 1976, and that change has made a difference in the law laid down. First and foremost, it is important to remember that Milkhiram’s case is a direct



authority on the amended O.XXXVII provision, as the amended provision in O.XXXVII Rule 3 is the same as the Bombay amendment which this Court was considering in the aforesaid judgment. We must hasten to add that the two provisos to sub-rule (3) were not, however, there in the Bombay amendment. These are new, and the effect to be given to them is something that we will have to decide. The position in law now is that the trial Judge is vested with a discretion which has to result in justice being done on the facts of each case. But Justice, like Equality, another cardinal constitutional value, on the one hand, and arbitrariness on the other, are sworn enemies. The discretion that a Judge exercises under Order XXXVII to refuse leave to defend or to grant conditional or unconditional leave to defend is a discretion akin to Joseph's multi-coloured coat – a large number of baffling alternatives present themselves. The life of the law not being logic but the experience of the trial Judge, is what comes to the rescue in these cases; but at the same time informed by guidelines or principles that we propose to lay down to obviate exercise of judicial discretion in an arbitrary manner. At one end of the spectrum is unconditional leave to defend, granted in all cases which present a substantial defence. At the other end of the spectrum are frivolous or vexatious defences, leading to refusal of leave to defend. In between these two extremes are various kinds of defences raised which yield conditional leave to defend in most cases. It is these defences that have to be guided by broad principles which are ultimately applied by the trial Judge so that justice is done on the facts of each given case.”

25. A perusal of the guidelines enumerated in the aforementioned paragraphs would demonstrate that on Defendant establishing substantial defence, which is likely to succeed and raising triable issues, showing a fair or reasonable defence, the Defendant is entitled for unconditional leave, whereas, various other factors need to be considered while granting conditional leave to defend or refusal to grant leave to defend.

26. In **B.L. Kashyap**, the Plaintiff therein, a registered partnership firm engaged in the manufacture and supply of iron and steel products, instituted a summary suit under Order XXXVII of the CPC for recovery of outstanding dues arising from supplies made for the real estate project titled “MIST”. Defendant No. 1 therein, sought leave to defend on the plea of



absence of privity of contract, contending that all purchase orders and invoices were in the name of Defendant No. 2 therein. The Trial Court, finding no triable issues, declined leave to defend to both Defendants and decreed the suit jointly and severally against them. The High Court subsequently affirmed that the decision rendered by the Trial Court, holding the defences to be frivolous and vexatious. Upon appeal, 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 the 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.

27. 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 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.”



28. In *Kiranmoyee Dassi v. J. Chatterjee*⁸, the Calcutta High Court delineated five guiding propositions for dealing with applications under Order XXXVII of CPC:-

- (i) “Where the Defendant discloses a good defence on merits, unconditional leave to defend must be granted;
- (ii) Where the defence raises a triable issue, indicative of a fair or bona fide dispute, unconditional leave should still be granted;
- (iii) Where the affidavit discloses facts that may entitle the Defendant to defend, albeit not establishing a defence outright, leave should be granted—though the Court may impose terms as to the time or mode of trial, but not in relation to security or deposit;
- (iv) Where the defence is sham, illusory or moonshine, leave to defend ought to be refused and the Plaintiff is entitled to judgment;
- (v) In such cases, however, the Court may, in its discretion, impose conditions such as requiring deposit of the claimed amount or furnishing of security before granting leave, thereby affording the Defendant a chance to prove his case.”

29. While reiterating the aforesaid proposition, the Bombay High Court in *Bankay Bihari G. Agrawal vs M/sBhagwanji Meghihi & Ors.*,⁹ observed that mere non-adherence to the prescribed timeline under Rule 227the Bombay High Court (Original Side) Rules, 1980 does not *ipso facto* entitle the Defendant to unconditional leave to defend; rather, judicial discretion must be exercised to evaluate, even in cases of such delay, the merits of the defence. It was held that the Court is thus empowered to assess whether the defence is *bona fide* or merely illusory, and thereafter, on a holistic consideration, determine whether leave to defend should be granted

⁸AIR 1949 Cal 479

⁹2000 SCC OnLine Bom 655



unconditionally, conditionally, or refused altogether. Any contrary interpretation would allow a Defendant with a sham defence to secure an unconditional right to contest solely on account of the Plaintiff's procedural lapse.

30. Furthermore, this Court in *Sh. Rinku Aggarwal v. Smt. Kanta Kumar*¹⁰ while affirming the legal position explicated through the aforementioned precedents, held that before leave to defend can be granted under Order XXXVII of CPC, the Defendant must satisfy the Court that a good defence exists on merits. The Defendant is required to raise triable issues which indicate the presence of a fair, bona fide, or reasonable defence, even if such defence does not amount to a positively strong defence. Where the Defendant discloses plausible and reasonable grounds raising triable issues, leave to defend may be granted either unconditionally or subject to terms. Conversely, if the defence set up is found to be illusory, sham, or vexatious, the Defendant would not be entitled to any leave to defend the suit.

31. It is, thus, a well-entrenched legal proposition that, while adjudicating an application for leave to defend under Order XXXVII of CPC, the Court must eschew any presumption that refusal of leave is the norm, or that such leave is to be granted solely in exceptional circumstances or only where the defence appears manifestly meritorious. Understandably, the remedy of summary suit is a departure from the norms of an adversarial judicial process wherein a party facing allegations is entitled to present a defence in his favour. It is for this reason that, despite the existence of a special summary procedure for securing a judgment, the leave to defend is granted to the defendant as a matter of course, except when the exceptional

¹⁰CS(OS) 1912/2006



circumstances necessitating its denial exist. For, at the core of it lies the basic principle that adjudication must be based on the appreciation of evidence of both sides, provided there is a reasonable defence in sight.

32. Where the Defendant discloses triable issues indicative of a fair, bona fide, or reasonable defence, the ordinary course is to grant unconditional leave, save where compelling and cogent reasons necessitate departure from this norm.

33. Even in instances where a reasonable doubt persists regarding the plausibility of the defence, the Court may, in the interests of justice, impose calibrated conditions, reserving outright refusal strictly for those rare cases where no genuine triable issue is demonstrated and the defence is manifestly frivolous or vexatious. Between the broad spectrum of substantial defence and frivolous or vexatious defence, there lies a myriad set of circumstances which require the Court to enter into a delicate judicial inquiry. These circumstances evolve on a case to case basis, and no amount of linguistic gymnastics could fit these circumstances into rigid compartments. Ultimately, the test is whether, on an overall assessment of the case, a fair and reasonable defence is in sight, which could only be determined upon trial and appreciation of evidence. If yes, the Court must not shut the doors at the outset. However, depending on the plausibility of the defence, conditions could be imposed so as to safeguard the interests of the plaintiff as well as to uphold the integrity of the summary procedure. Thus, conditional leave operates as an intermediate safeguard, harmonising the imperatives of commercial celerity with the principles of natural justice.

34. The doctrinal constant across the aforementioned decisions is that the grant of leave to defend is the norm; refusal is the exception. The Court's



discretion, while broad, must be exercised judicially, eschewing arbitrary denial and ensuring that no genuine triable issue is foreclosed save in cases of manifestly sham or vexatious defence.

35. The conditions so imposed need not invariably be pecuniary in nature; they may equally extend to procedural directives, including the structuring of an organised and accelerated trial framework, thereby harmonising the protection of parties' rights with the objective of prompt adjudication.

36. At this stage, it is also pertinent to note the decision relied upon by learned counsel for the Plaintiff in the case of **Rahul S. Shah**, wherein, the Supreme Court has mandated that, in suits and execution proceedings, Courts adhere to specific procedural safeguards. In money suits, it has been directed that, prior to the settlement of issues, the Defendant may be compelled to disclose, on oath, assets commensurate with the liability claimed. Furthermore, in appropriate cases, and at any stage during the pendency of the suit, the Court may invoke its inherent powers under Section 151 of CPC to require the furnishing of security to ensure satisfaction of any eventual decree.

37. Paragraph no.42 of the said decision is extracted as under:-

“42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:

"1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third.

2. Party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.

3. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.



4. *After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the suit.*

5. *Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.*

6. *The Court must, before passing the decree, pertaining to.*

7. *Delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.*

8. *In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.*

9. *In a suit for payment of money, before settlement of issues, the Defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.*

10. *The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such applications that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.*

11. *The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.*

12. *The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala-fide, resort to Sub-Rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.*

13. *Under section 60 of CPC the term".....in name of the judgment-debtor or by another person in trust for him or on his behalf' should be*



read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

14. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

15. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

16. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts."

Factual analysis

38. On the conspectus of the settled legal position, when the factual canvas of the instant suit is subjected to scrutiny, it becomes manifest that the suit has been instituted by the Plaintiff seeking a decree in its favour and against all the Defendants, jointly and severally, for recovery of the outstanding sum of Rs. 4,10,00,000/- alleged to be due and payable under the Substitution and Amendment Agreement dated 25.06.2020.

39. The reliefs prayed in the instant civil suit are extracted as under:-

“(a) pass a decree in favor of Plaintiff and against the Defendants jointly and severally to pay the outstanding dues of Rs.4,10,00,000.00 (Rupees Four Crores and Ten Lacs only) payable to the Plaintiff under Substitution and Amendment Agreement dated 25.06.2020;

(b) direct the Defendants to pay a sum of Rs. 1,96,80,000/- to the Plaintiff, jointly and severally, towards past interest on the aforesaid principal amount of Rs. 4,10,00,000/- calculated @ 12 % p.a. for the period June, 2020 to May, 2024;



(c) direct the Defendants to pay to the Plaintiff, jointly and severally, pendente-lite and future interest on the aforesaid amount of Rs. 4,10,00,000/- (Rupees Four Crores and ten Lacs only) @ 12 % p.a. or at any other rate as the Hon'ble court may deem fit and proper.

(d) award cost of the proceedings; and

(e) pass any other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

40. The facts further disclose that the NHAI awarded the highway construction project to Defendant No. 1 in the year 2015. Defendant No. 3 is stated to be a Special Purpose Vehicle (SPV) constituted by Defendant No. 1. The project was awarded to Defendant No. 1, who, in turn, incorporated Defendant No. 3 as its wholly owned SPV. Subsequently, Defendant No. 3 awarded the work to Pan India Infraprojects Private Limited, i.e., Defendant No. 2, which is also a wholly owned subsidiary of Defendant No. 1 and functions as a nodal agency for infrastructure-related undertakings of the Essel Group. Thus, Defendants No. 1 to 3 are sister concerns. Defendant No. 4 is a company duly incorporated under the Companies Act, to whom the entire business was later transferred pursuant to a Business Transfer Agreement. According to the Plaintiff, Defendant No. 4 has assumed all contractual obligations previously executed by the other Defendants in connection with the business transferred to it.

41. *Vide* Letter of Award ("LOA") dated 31.01.2017, Defendant No. 2 awarded a contract to the Plaintiff for the execution of works comprising Earthwork, Granular Sub-Base (GSB), Wet Mix Macadam (WMM), Drainage, and Culverts for the section spanning KM 64 to KM 75, in



accordance with the technical specifications and drawings prescribed under IRT/MORTH norms.

42. During the subsistence of the project, a Substitution and Amendment Agreement dated 25.06.2020 came to be executed amongst Defendant Nos. 1, 2, 3, and the Plaintiff. It is averred that under the terms of the said agreement, it was agreed *inter se* that the Engineering, Procurement and Construction (EPC) contract would be amended so as to substitute Defendant No. 2 with Defendant No. 3. It is the case of the Plaintiff that the payment liability of Defendant No. 2 towards the Plaintiff, which had already crystallized as on the date of execution of the said agreement, was quantified at Rs. 6,10,00,000/- The same was agreed to be discharged in three instalments, as set forth in the agreement. Further, the said agreement also recorded that the said liability of Rs. 6,10,00,000/- would stand assigned to Defendant No. 3 along with the transfer of the business.

43. It is additionally submitted on behalf of the Plaintiff that, under a BTA dated 08.06.2020, Defendant No. 3 transferred its business, along with all rights and liabilities, to Defendant No. 4, subject to the terms and conditions embodied therein. Learned counsel for the Plaintiff, while drawing the attention of this Court to the relevant provisions of the said agreement, has contended that under the clause titled "*Assumed Contracts and Assured Liabilities*," the liability amounting to Rs. Rs. 6,10,00,000/- in favour of the Plaintiff was also subsumed and consequently transferred to Defendant No. 4.

44. For the sake of clarity, relevant clauses are extracted as under:-

“ 1.3 Assumed Contracts: *Assumed Contracts means all contracts, arrangements, sub-contact agreements, purchase orders (including purchase orders booked prior to the Closing date but pending*



execution as on the Closing Date), and purchase orders to the extent act there are subsisting warranty obligations in favour of the Transferor as on the Closing Date, and other commitments, in each case, executed by the Transferor prior to the Closing Date, to the extent related to the Identified Business, and more specifically stated in Annexure B

Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, the Transferee shall assume effective as of the Closing Date, and from and after the Closing Date, the Transferee shall pay, discharge or perform when due, as appropriate, the liabilities set forth below (the "Assumed Liabilities"):

- a) all liabilities relating to the Identified Business for its operations from and after the Closing Date;
- b) all liabilities for trade accounts payable, arising in connection with the identity of Business, as of the Closing Date and reflected in the Financial Statements,
- c) all liabilities and obligations arising on or after the Closing Date in connection with the Assumed Contracts;
- d) in respect of the Assumed Contracts, all obligations that are required to be performed from and after the Closing Date including that under the Financing Agreements;
- e) all liabilities arising out of acts, omissions, events relating to or occurring in connection with the operations of the Identified Business on or after Closing Date based on the acts or omissions of the Transferee occurring on or after the Closing Date;
- f) in respect of taxes, all liabilities pertaining to the Identified Business for its operations from and after the Closing Date. It is specifically clarified that all income tax (including cesses and surcharges applicable thereupon) and/or capital gains taxes (including cesses and surcharges applicable thereupon) pertaining to the transfer of the Identified Business shall be to the account of the Transferor;

The list of Assumed Liabilities as on the date of the Financial Statements is specified in Annexure C. Transferor represents that, as on the Execution Date, there has been no change in the amount of Assumed Liabilities as mentioned in Annexure C, except for accrual of interest in terms of the Financing Agreements

1.5 Excluded Liabilities: Excluded Liabilities means any liability or obligation of the Transferor (whether known or unknown, absolute, accrued, contingent, liquidated, unliquidated or otherwise, due or to become due or otherwise) which shall not be transferred or assumed by the Transferee and will include the following:

- a) any claims not relating to or not arising in connection with Identified Business,
- b) any claims and liabilities arising in respect of the Identified Business directly attributable to any events, facts or circumstances in existence



on or prior to the Closing Date (even if such Claim is made or liability is crystallised after the Closing Date), except the trade account payables as of the Closing Date (which form a part of the Assumed Liabilities);

c) any liabilities or obligations for taxes relating to the Identified Business for any period on or prior to the Closing Date;

d) all liabilities under any Assumed Contracts that arise on or after the Closing Date to the extent they arise out of or relate to; h) any breach of, or failure to comply with any covenant or obligation in any such contract, prior to Closing Date, (ii) any event that occurred prior to the Closing Date which, with or without notice, lapse of or both, would constitute such a breach or failure; or (iii) any obligation which was required to be fulfilled by Transferor or any of its affiliates / associated entities/related parties prior to the Closing Date.

e) all liabilities arising out of or relating to product liability, indemnity, warranty, infringement, misappropriation or similar claims by any person to the extent an mgout of acts, omissions or events, or relating to, or occurring in connection with the operation of the identified Business or otherwise prior to the Closing Date or based upon the acts or omissions of Transferor and any of its affiliates / associated entities/ related parties occurring after the Closing Date:

f) ail liabilities arising under claims by or with respect to any current or former employee of the Transferor and any of its affiliates / associated entities / related parties relating in any way to wages, salaries, remuneration, compensation, allowances, bonuses, ex-gratia payments, reimbursements, service benefits (including workers' compensation and unemployment benefits) and allother entitlements and all tax deductions and other contributions relating to the foregoing, termination or continuation of their employment, violation of employment laws or delay / failure to provide any notice relating to their employment; in all cases based on acts, omissions or events occurring prior to the completion of the Closing Date, or based upon the acts or omissions of Transferor and any of Its affiliates / associated entities / related parties occurring after the Closing.

g) all liabilities in relation to the legal proceedings initiated against the Transferor prior to the Closing Date or which are initiated post the Closing Date but relate to a period prior to the Closing Date; (except as set forth in this Agreement) all liabilities arising out of or relating to indebtedness incurred by the Transferor; and i) all liabilities (present or future) , arising out of the Assumed Liabilities (including Labor Cess liability) exceeding an aggregate amount of Rs.66, 3,13,90,019/- (Indian Rupees Six hundred and Sixty three Crores Thirteen lakh ninety thousand and nineteen only).

Notwithstanding any other provision of this Agreement, all Excluded Liabilities shall continue to remain with the Transferor and the



Transferor shall remain bound by and liable for and shall pay and discharge the Excluded Liabilities The Parties expressly agree and acknowledge that the Transferee shall not assume any Excluded Liability.

1.6 The Transferee shall also be entitled to continue to avail the tax Incentives, tax deductions, tax holidays and any other tax reliefs for the unexpired period for which the Transferor was eligible to avail in relation to the Identified Business of the undertaking which is being transferred by the Transferor.”

45. It is, therefore, the emphatic averment of the Plaintiff that the BTA was duly acted upon by Defendant No. 4, inasmuch as a substantial sum of Rs. 1,96,00,000/- stood remitted to the Plaintiff through the RTGS mechanism. The Plaintiff, on this factual foundation, asserts that the balance consideration in the sum of Rs. 4,10,00,000/- remains unequivocally outstanding and payable by Defendant No. 4.

46. The principal and foundational defence canvassed on behalf of Defendant No. 4 is predicated upon the construction of the terms of the BTA, wherein it is the specific stipulation that Defendant No. 3 undertook the responsibility of discharging the payment obligations towards unpaid contractors of Defendant No. 2. Within this contractual framework, Defendant No. 4 asserts that its role was confined to effectuating payments not exceeding an aggregate sum of Rs. 44,40,73,965/-, and such disbursements were to be undertaken strictly in accordance with the instructions issued by Defendant No. 3. It is further pleaded that these payments could be made either directly to Defendant No. 3, to Defendant No. 2, or to the EPC contractors of Defendant No. 2, on behalf of Defendant No. 3, without Defendant No. 4 ever assuming any direct or independent liability towards the Plaintiff.



47. The Plaintiff's claim is, in essence, sought to be channelled through Defendant No. 3, predicated on the assertion that the liability of Defendant No. 3, arising under the underlying commercial arrangement, stood transferred to Defendant No. 4 under the aegis of the BTA. In this regard, the Plaintiff contends that such transfer of obligations encompassed the Plaintiff's dues, thereby rendering Defendant No. 4 liable in law.

48. Upon a *prima facie* evaluation of the factual and legal substratum, this Court is of the view that the determination as to whether privity of contract exists *inter se* the Plaintiff and Defendant No. 4 is not only germane but constitutes a triable issue warranting adjudication on evidence.

49. Furthermore, it is an admitted position that a certain amount has been transferred by Defendant No. 4 to the Plaintiff. The Plaintiff contends that such remittance amounts to part performance and constitutes an unequivocal acceptance of the entirety of the liability owed by Defendant No. 4 towards the Plaintiff, whereas, Defendant No.4 rebuts this claim. The aforesaid issue necessitates adjudication upon appreciation of evidence during the course of trial, and any conclusive finding at this interlocutory stage would be untenable. Further, the mode, manner, and purpose of disbursement by Defendant No. 4, whether direct or indirect, is also a subject matter of adjudication as there appears to be a significant variance on this aspect, thus rendering it triable. Nonetheless, the said circumstance discloses a *prima facie* case in favour of the Plaintiff, warranting the imposition of conditions upon Defendant No. 4 while granting leave to defend.

50. It is also to be noted that while the instant suit has been instituted in the year 2024, the Plaintiff had earlier invoked the jurisdiction of this Court under Section 11 of the Arbitration and Conciliation Act, 1996, in the year



2022. However, the said petition was subsequently withdrawn. The case of Defendant No. 4 is that such withdrawal was occasioned by the Plaintiff's own realization of the absence of any privity of contract between itself and Defendant No. 4. In contradiction, the Plaintiff seeks to invoke the principle of exclusion of time, contending that a period of 696 days ought to be excluded from the computation of limitation, as the same was consumed in the *bona fide* prosecution of the proceedings under Section 11 of Arbitration and Conciliation Act, 1996. This competing narrative constitutes a substantial and material aspect meriting judicial scrutiny and determination at trial, as the question involved is both of law and fact.

51. Thus, the defence proposed by the defendant could not be termed as frivolous or vexatious at the outset, and a summary finding to the effect that no substantive defence has been disclosed, is not justified in the facts of the present case. Accordingly, the Court deems it apposite to allow the instant application for leave to defend.

52. Thus, in the interest of expeditious disposal and to safeguard the ends of justice, it is deemed fit to impose the following conditions upon Defendant No. 4:

(i) Defendant No. 4 shall not seek any unwarranted or dilatory adjournments; the proceedings shall be expedited and all parties shall extend full cooperation to ensure timely progress;

(ii) Defendant No. 4 shall place on record, before the next date of hearing, a duly sworn affidavit disclosing its assets in compliance with applicable legal requirements;

(iii) Defendant No. 4 shall deposit a sum of Rs. 2,00,00,000/-with the Registrar General of this Court within four weeks from today. The said



amount shall be forthwith invested in an interest-bearing fixed deposit account, with an auto-renewal facility, until further orders of this Court.

53. In view of the aforesaid, the instant application stands disposed of.

CS(COMM) 501/2024, I.A. 5462/2025, I.A.18261/2025

1. Let the matter to continue to proceed before the concerned Joint Registrar on 13.10.2025.
2. Thereafter, list before the Court on the date to be assigned by the concerned Joint Registrar.

**(PURUSHAINDRA KUMAR KAURAV)
JUDGE**

AUGUST 19, 2025/NC