



2025:DHC:7376



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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) 360/2024, I.A. 10148/2024, I.A. 30317/2024, I.A. 30859/2024, I.A. 30949/2024, I.A. 34332/2024, I.A. 46912/2024 and I.A. 49224/2024

RAMA LUTHRA

W/O LATE MR.. H.C. LUTHRA,
AGED ABOUT 75 YEARS,
R/O E-225 , 3RD FLOOR,
EAST OF KAILASH,
NEW DELHI-110065

.....Plaintiff

(Through: Mr Gautam Narayan, Sr. Advocate, with Mr.Abhimanyu Bhandari, Sr. Advocate with Ms.Srishti Juneja and Ms.Sugandh, Advocates.)

Versus

DEEPALI MALIK

W/O LATE MR. SURENDER MALIK
R/O HOUSE NO. 575, RAILWAY ROAD,
ADVOCATE COLONY, WARD NO. 19, HANSI,
HISAR - 125033,
HARYANA

.....Defendant No.1

DUSHYANT MALIK

S/O LATE MR. SURENDER MALIK
R/O HOUSE NO. 575, RAILWAY ROAD,
ADVOCATE COLONY, WARD NO. 19, HANSI,
HISAR - 125033, HARYANA

.....Defendant No.2

PRERNA

D/O LATE MR. SURENDER MALIK



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R/O HOUSE NO. 575, RAILWAY ROAD,
ADVOCATE COLONY, WARD NO. 19, HANSI,
HISAR - 125033, HARYANA

.....Defendant No.3

AJIT SINGH MALIK
F/O LATE MR. SURENDER MALIK
R/O HOUSE NO. 575, RAILWAY ROAD,
ADVOCATE COLONY, WARD NO. 19, HANSI,
HISAR - 125033, HARYANA

.....Defendant No.4

VIDYA MALIK
M/O LATE MR. SURENDER MALIK
R/O HOUSE NO. 575, RAILWAY ROAD,
ADVOCATE COLONY, WARD NO. 19, HANSI,
HISAR - 125033, HARYANA

.....Defendant No.5

(Through: Mr.Sandeep Sharma, Sr. Advocate with Mr.Raktim, Mr.Vikas, Mr.Shivam Pal Sharma, Mr.Aman Dhyani, Ms.Kanchan, Mr. S. Vinod, Mr.Sarthak, Mr.Vijay and Mr.Akash, Advocates for D-1 to 5.)

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Reserved on: 01.08.2025
Pronounced on: 25.08.2025

JUDGMENT

I.A. 33665/2024 (By D-1 and 2 under Order XXXVII Rule 3(5)- for grant of unconditional leave to defend to D-1 to 5)

The instant application has been filed on behalf of the Defendants seeking leave to defend the present suit.



Brief facts

2 As per the plaint, the facts manifest that in August 2021, the Plaintiff was approached by one late Mr. Surender Malik, who requested a short-term financial loan of ₹ 5,00,00,000. Pursuant to the said request, on 18.08.2021, the parties entered into a formal Loan Agreement dated 18.08.2021, whereby the Plaintiff advanced the aforesaid sum, to late Mr. Malik, carrying an agreed interest @ 12% per annum, for a fixed tenure of one year commencing from 18.08.2021 and ending on 17.08.2022.

3 The contractual stipulation required that monthly interest payments be made by the 7th day of each succeeding month through RTGS, NEFT, or IMPS. The loan was disbursed through two cheques, aggregating to the principal sum of ₹ 5,00,00,000, and the same was duly secured by a Demand Promissory Note of even date executed by late Mr. Malik in favour of the Plaintiff.

4 Between 25.11.2021 to 13.07.2022, late Mr. Malik availed five successive short-term loans from the Plaintiff, each secured by corresponding loan agreements and promissory notes. All loans carried 12% interest p.a., repayable in monthly instalments on identical terms. The loans were disbursed *via* cheques on the respective agreement dates.

5 On 18.08.2022, late Mr. Malik sought an extension for the repayment of the first loan dated 18.08.2021. A "*Renewed Term Sheet*" was executed on the same date, extending the repayment deadline to 17.08.2023. In furtherance thereof, late Mr. Malik executed a fresh Demand Promissory Note dated 18.08.2022 for ₹5 crores in favour of the Plaintiff.



6 In partial discharge of his obligations, on 10.04.2023, the Plaintiff received a payment of ₹1,50,00,000/- from late Mr. Malik towards the principal, through RTGS. Thereafter, on 09.05.2023, the Plaintiff received the last recorded interest payment from late Mr. Malik's account, amounting to ₹7,70,000/- for the month of April 2023, against a total interest due of ₹8,95,000/-.

7 On 09.06.2023, late Mr. Surender Malik passed away. Subsequent to his demise, on 19.10.2023, the Plaintiff received ₹50,00,000/- towards the outstanding principal, remitted in five equal tranches of ₹10,00,000/- each, through RTGS/NEFT.

8 On 10.11.2023, the Plaintiff addressed a detailed written communication to Defendant No. 1, i.e., the wife of late Mr Malik, setting out the complete chronology of the loan transactions with late Mr. Malik, along with particulars of repayments made, and called upon Defendant No. 1 to liquidate the remaining principal sum together with accrued interest.

9 Pursuant to the aforesaid notice, on 21.11.2023, Defendant No. 1 remitted a sum of ₹75,00,000/- towards the principal amount through RTGS. Thereafter, on 04.03.2024, a further sum of ₹50,00,000/- was received from Defendant No. 1 towards principal repayment *via* RTGS.

10 It is the case of the Plaintiff that she is a senior citizen and at this juncture of her life, her only source of income was the interest on the loan granted by her to late Mr. Surender Malik. It is also the case of the plaintiff that she has not received even a single penny for the last 1.5 years and is struggling to make ends meet. Thus, she has instituted the present suit under Order XXXVII of the Code of Civil Procedure, 1908 (*hereinafter referred to* 'CPC'), seeking recovery of a sum of ₹7,75,21,689/- from the Defendants.



Submissions

11 Mr Sandeep Sharma, learned senior counsel for Defendants, at the inception, points out that Defendants No. 3 and 5 have not yet been served with summons in the present suit, as recorded *vide* order dated 16.07.2024 passed by the Joint Registrar. He contends that without prejudice, the said Defendants, in the interest of expeditious disposal and to avoid procedural delays, have proactively filed the instant application along with Defendants no.1 and 2, seeking leave to defend despite the absence of formal service.

12 Mr. Sharma, learned senior counsel, has made the following broad submissions:-

- i) There exists no privity of contract between the Plaintiff and these Defendants. No payment has been made to them by the Plaintiff, and none of the relied-upon documents bear their acknowledgment or signatures.
- ii) The allegations regarding purported execution of loan agreements between the Plaintiff and late Mr. Surender Malik are false, rendering the suit misconceived and liable to dismissal.
- iii) The Plaintiff seeks to enforce the alleged financial liabilities of late Mr. Surender Malik against his legal representatives, despite no fresh contract being entered into with them.
- iv) The Defendants dispute the execution of the alleged promissory notes and the receipt of any loan amounts,
- v) The Plaintiff has filed false and fabricated documents. The suit suffers from non-joinder and misjoinder of necessary parties.



13 Furthermore, learned senior counsel contends that the present suit raises substantial triable issues that require an appreciation of evidence. Reliance is placed on the decisions of the Supreme Court in *B.L. Kashyap & Sons Ltd. v. JMS Steels & Power Corporation*¹, *Vinayak Purshottam Dube (Deceased) through LRs. v. Jayashree Padamkar Bhat & Ors.*², the decisions of this Court in *Vijay Singh & Ors. v. Manali Malik & Ors.*³, *Sarla Devi & Ors. v. Daya Ram & Ors.*⁴, and the decision of the Bombay High Court in *Smt. Sheela Arora v. Sanjay Fetah Bahadur Srivastava*⁵.

14 In conclusion, he contends that the alleged loan agreements are deficient and ineligible for summary proceedings under Order XXXVII of CPC, and the Plaintiff has suppressed material facts and mischaracterized transactions. He therefore prays for unconditional leave to defend, so that the matter may proceed to trial on the merits.

15 *Per contra*, Mr. Gautam Narayan, learned senior counsel for Plaintiff, submits that the leave to defend filed on behalf of Defendant Nos. 3 to 5 is *non-est*, as they deliberately refused service of summons and failed to enter an appearance. He contends that the affidavits filed with the application reveal that Defendant Nos. 4 and 5 reside with Defendant Nos. 1 and 2. Therefore, according to learned senior counsel, under Order XXXVII Rule 2(3) CPC, a defendant who fails to enter an appearance is deemed to admit the plaintiff's allegations, entitling the Plaintiff to a decree.

¹ (2022) 3 SCC 294

² (2024) 9 SCC 398

³ 2009 SCC OnLine Del 1293

⁴ 1994 SCC OnLine Del 689

⁵ 2003 SCC OnLine Bom 1038



16 Learned senior counsel further submits that the Defendants have failed to raise any genuine triable issues and as per settled law, the defence must be *bona fide* and not frivolous or vexatious.

17 In the contextual background of the instant case, Mr. Narayan has made the following submissions:-

- i) Defendant No. 2 has expressly admitted that the Plaintiff advanced the money to the late Mr. Surender Malik, further acknowledging that the transaction was to be shown as a loan for accounting and taxation purposes.
- ii) The voice notes filed as Document No. 5 with the reply to I.A. No. 33665 of 2024, wherein late Mr. Surender Malik and Defendant No. 1 repeatedly reassured the Plaintiff of repayment. These notes, coupled with evidence of continued payments until March 2024, establish that the transaction was a genuine loan rather than an investment.
- iii) The Defendants' reliance on alleged investments in various entities is unsupported and inconsistent. Their defence rests on trivial objections, such as minor discrepancies in notarization dates of the loan agreements, which are irrelevant. They have failed to dispute the debt or address the issuance of security cheques by late Mr. Malik.
- iv) The Defendants' objections, including references to incomplete WhatsApp chats, are frivolous and intended solely to delay proceedings. In contrast, the Plaintiff has provided substantial documentation evidencing the loan, including agreements, cheques, and voice assurances.



v) Reliance is placed on the decisions in *IDBI Trusteeship Services Limited v. Hubtown Limited*,⁶ *Mechelec Engineers & Manufacturers v. Basic Equipment Corporation*⁷, *Southern Sales and Service v. Sauermilch Design*,⁸ *Sudin Dilip Talaulikar v. Polycap Wires*,⁹ *Vipin Gupta v. Prem Singh*,¹⁰ *Swaranjit Singh Sayal v. M.K. Jain*,¹¹ *Abhay Kumar Jha v. Bosch*¹²; *Sanjeev Jain v. Rajni Dhingra & Ors.*,¹³ *Mobile Arts S.A.L. v. Mauj Mobile Pvt. Ltd.*¹⁴, and *V.K. Enterprises & Anr. v. Shiva Steels*.¹⁵

18 In light of the above, it is submitted by learned senior counsel that the Defendants' leave to defend is baseless and should be rejected. The Defendants have admitted the loan in material particulars, failed to raise any triable issue, and are engaging in a strategy to delay adjudication of the Plaintiff's legitimate claim.

Contours of Order XXXVII Rule 3 (5) of CPC

19 It is trite law that the object of the summary procedure contemplated under Order XXXVII of the CPC, is to ensure a swift, efficacious, and expeditious adjudication of certain categories of suits, predominantly those arising from written contracts, negotiable instruments, and other documents evidencing liquidated demands, where expedition is essential to the

⁶ (2017) 1 SCC 568

⁷ (1976) 4 SCC 687

⁸ (2008) 14 SCC 457

⁹ (2019) 7 SCC 577

¹⁰ 2006 SCC OnLine Del 981

¹¹ 2023 SCC OnLine Del 7585

¹² RFA(OS)(Comm) 1/2024 before the Delhi High Court

¹³ 2018 SCC OnLine Del 13093

¹⁴ Writ Petition No. 5795 of 2024 before the Bombay High Court

¹⁵ (2010) 9 SCC 256



preservation of commercial certainty and liquidity. The legislative intent is to obviate protracted trials in cases where the Defendant does not possess a substantial or *bona fide* defence, thereby protecting the Plaintiff's right to an early decree and preventing undue delay through frivolous or vexatious pleas.

20 More importantly, under sub-rule (5) of Rule 3, the Defendant may only defend the suit upon obtaining leave to defend, which shall be granted, unconditionally or on terms, if facts disclosed a substantial or genuine defence. The first proviso ensures that refusal of leave is permissible only where the proposed defence is frivolous or vexatious, while the second proviso mandates deposit of any admitted sum as a condition precedent to the grant of leave.

21 The Supreme Court has consistently reiterated that the grant of leave to defend is the rule and its denial is the exception. Where a substantial defence is disclosed, unconditional leave must follow. Even in cases of triable issues or plausible though doubtful defences, leave is ordinarily to be granted, albeit subject to calibrated conditions. Refusal of leave is justified only in rare situations where no genuine triable issue exists and the defence is patently sham or vexatious.

22 Reference can be made to the decision of the Supreme Court *in Santosh Kumar v. Bhai Mool Singh*¹⁶, where it has been held that when a defence raises a bona fide and clear triable issue, unconditional leave to defend must ordinarily be granted under Order XXXVII Rule 3(1) of CPC. The Court emphasised that at the leave stage, it is sufficient if the

¹⁶ AIR 1958 SC 321



Defendant's affidavit discloses facts which, if proved, would constitute a plausible defence.

23 While relying on the aforesaid decision, the Supreme Court in ***Machalec Engineering & Manufacturing v. Basic Equipment Corporation***,¹⁷ held that Order XXXVII of CPC, as it then stood, enjoins upon the Court, upon application by the Defendant to give leave to appear and to defend the suit. The relevant extract of the aforesaid decision reads as under:-

7. We need not dilate on the well established principles repeatedly laid down by this Court which govern jurisdiction of the High Courts under Section 115 CPC. We think that these principles were ignored by the learned Judge of the High Court in interfering with the discretionary order after a very detailed discussion of the facts of the case by the learned Judge of the High Court who had differed on a pure question of fact — whether the defences could be honest and bona fide. Any decision on such a question, even before evidence has been led by the two sides, is generally hazardous. We do not think that it is fair to pronounce a categorical opinion on such a matter before the evidence of the parties is taken so that its effects could be examined. In the case before us, the defendant had denied, inter alia, liability to pay anything to the plaintiff for an alleged supply of goods. It is only in cases where the defence is patently dishonest or so unreasonable that it could not reasonably be expected to succeed that the exercise of discretion by the trial court to grant leave unconditionally may be questioned. In the judgment of the High Court we are unable to find a ground of interference covered by Section 115 CPC.

8. In Kiranmoyee Dassi Smt v. Dr J. Chatterjee [AIR 1949 Cal 479 : 49 CWN 246, 253 : ILR (1945) 2 Cal 145.] Das, J., after a comprehensive review of authorities on the subject, stated the principles applicable to cases covered by Order 17 CPC in the form of the following propositions (at p. 253):

“(a) If the defendant satisfies the court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence

¹⁷ (1976) 4 SCC 687



the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security.

(d) If the defendant has no defence or the defence set-up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence."

24 In ***IDBI Trusteeship Services Limited***, the Supreme Court has extensively considered the pre-amendment and post-amendment provisions of Order XXXVII Rule 3, the Court found that the discretion exercised by the Courts 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. It was also held 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 capitulate conditional leave to defend in



most cases. 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 paragraph would reveal that on Defendant establishing a substantial defence, which is likely to succeed, raising triable issues, showing a fair or reasonable defence, the Defendant is entitled to unconditional leave, whereas, various other factors need to be considered while granting conditional leave to defend or refusing to grant leave to defend.

26 In **B.L. Kashyap**, the Supreme Court, while elucidating the governing principles for the 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 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”

27 Concerning the examination of defences in summary suits, **Vipin Singh** established that patently false defences regarding lost instruments would not entitle the defendant to leave to defend. The principle was reinforced in **Swaranjit Singh Sayal** where technical objections were rejected and the Court insisted on proper scrutiny of documentary evidence. The relevant paragraph reproduced herein is as under:

19. In a case like the present where the claim of the plaintiff is for a fixed amount of money, based on a receipt which clearly sets out the background in which the amount of Rs. 2 crores was received by the defendant and on a cheque for Rs. 1 crore, payment whereof towards the sale consideration is also admitted by the defendant, the acceptance of the defendant's plea that the suit is not maintainable under Order XXXVII would only prolong litigation, which course of action the Court must avoid. Once it is clear that the defendant unequivocally admits the receipt of the entire sum of Rs. 3 crores from the plaintiff towards the sale consideration of the aforesaid property, the sale deed in respect whereof was never executed, his technical plea that the suit is not maintainable under Order XXXVII CPC deserves to be rejected.”



28 Similarly, in **Abhay Kumar Jha**, the Court has held as under:

“17. Although the foregoing discussion would show that the respondent has a strong case for recovery of the claimed dues, i.e., the principal amount, without a trial, the suit could not have been decreed since the defence put forth by the appellant is that he did not receive the goods and services. There are, even as per learned counsel appearing on behalf of the respondent, no receipts on record. Ordinarily, when services or goods are delivered, some documentation would be generated to show dispatch/delivery. This aspect attains criticality with regard to goods that the respondent claims to have supplied. Respondent, concededly, has not placed on record, goods/lorry receipts or other evidence which would establish the transportation of goods to the consignee i.e., the appellant.

18. Learned counsel appearing on behalf of the respondent submits that since replies to the emails dated 27th November, 2017, 14th March, 2018 and 20th April, 2018, did not dispute receipt of goods or services, documents evidencing the same were not placed on record.

19. It is important to note that the appellant claims that he had entered other transactions with the respondent apart from those captured in the three invoices referred to in the plaint. Given this position, in our view, the defence raised by the appellant may be “improbable” but it still raises a possibility of its being correct and hence would be covered under the situation envisaged in paragraph 17.4 of the aforementioned judgment in IDBI Trusteeship Services Ltd. (supra).”

29 Thus, the spectrum of judicial discretion while adjudicating on an application for leave to defend extends from unconditional leave in cases of substantial or fair defence, to conditional leave in cases involving doubt as to *bona fides* or plausibility, to outright refusal in cases of manifestly frivolous pleas. The discretion, while wide, must be exercised judicially, balancing the legislative objective of expediency with the fundamental requirement of affording a fair opportunity to defend.

30 Recently, this Court in **Vidya Projects Private Limited V. Essel Infraprojects Limited & Ors**¹⁸, while taking note of some of the aforesaid

¹⁸ 2025:DHC:7172



decisions, held that 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. It was also held that 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. Thus, it was reiterated that conditional leave operates as an intermediate safeguard.

The relevant extract of the decision in ***Vidya Projects*** reads as under: -

“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”

31 Having examined the trite law, it is also imperative to consider the decisions relied upon by the defendants to contend that, in the facts of the



instant case, the leave to defend ought to be granted on the ground of triable issues.

32 Regarding the maintainability of summary suits against legal representatives, a Division bench of this Court in **Sarla Devi**, had held that the summary procedure under Order XXXVII of CPC could not be invoked against the legal heirs of a deceased defendant, as their liability is limited to the deceased's estate. The aforesaid explication of law was subsequently reconsidered in **Sanjeev Jain**, a decision relied upon the plaintiff, where the Court distinguished between monetary claims and personal obligations, holding that summary suits could proceed against legal representatives for pure money claims.

33 Recently, the Supreme Court in **Vinayak Purshottam Dube (Deceased)** held that while legal heirs may be liable for monetary claims to the extent of the inherited estate, obligations requiring personal performance or specialized skills of the deceased cannot be enforced against Legal representatives. Relevant paragraphs have been reproduced as under:

39. Therefore, if the estate of the deceased becomes liable then the legal representatives who in law represent the estate of a deceased person or any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued is liable to the extent the estate has devolved. Hence, what is crucial is that the estate of a deceased person which becomes liable and the legal representatives must discharge their liability to a decree-holder or a person who has been granted an order to recover from the estate of the deceased which they would represent and not beyond it.

40. But in the case of a personal obligation imposed on a person under the contract and on the demise of such person, his estate does not become liable and therefore, the legal representatives who represent the estate of a deceased would obviously not be liable and cannot be directed to discharge the contractual obligations of the deceased.



42. *This position is also clear on a reading of Section 50 CPC which states as under*

“50 Legal representative (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased. (2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit”

43. Thus, any decree which is relatable to the extent of the property of the deceased which has come to the hands of the legal representatives and has not been duly disposed of, the same would be liable for execution by a decree-holder so as to compel the legal representatives to satisfy the decree. In this context, even a decree for preventive injunction can also be executed against the legal representatives of the deceased judgment-debtor if such a decree is in relation to the property or runs with the property if there is a threat from such legal representatives.

44. In view of the aforesaid discussion, we hold that the legal representatives of the deceased opposite party-appellants herein are not liable to discharge the obligation which had to be discharged by the deceased opposite party in his personal capacity and hence that portion of the impugned orders of NCDRC, State Commission and District Forum are set aside. Needless to observe that the direction for payments shall be made by the legal representatives from the estate of the deceased opposite party if not already satisfied

34 Taking a stern approach, this Court in **Vijay Singh** while considering an application for leave to defend in a summary suit under Order XXXVII of CPC based on dishonoured cheques presented after the death of the drawer, has held as under:-



“ 12. Section 30 also requires due notice of dishonour to be given to the drawer of the cheque for maintaining a claim for compensation on account of dishonour of the cheque. Thus, the dishonour of the cheque is actionable under Order 37 of the CPC only if notice of dishonour has been given to the drawer. If the drawer is dead on the date of dishonour or even on the date of presentment, no notice can possibly be given to him. That also leads to the inevitable conclusion that in such a eventuality no suit under Order 37 of the CPC is maintainable on the basis of a cheque.

13. It is to be noted that the drawing of a cheque does not by itself operate as an assignment of the monies in the hands of the banker in favour of the payee. The holder of a cheque has no right to enforce payment from the bank unless the banker has contracted with the holder to honour. The banker is only liable to the order of the drawer and thus if there is no order of the drawer on the banker, on the date of the presentment owing to the death of the drawer, the bank is not liable to pay. Section 57 provides that the legal representatives of a deceased person cannot negotiate by delivery only a cheque payable to order and endorsed by the deceased but not delivered. This is on the ground that the legal representative is not the agent of deceased. Upon demise, the estate including the amounts with the bank vest in the legal representatives or nominee and it requires a fresh act on the part of the legal representative or nominee to transfer the money, if any. Only if the cheque had been signed by the legal representative, at the instance of holder thereof does the legal representative becomes personally liable thereunder, under Section 29 of the Act.

21. Under the provisions of the Negotiable Instruments Act, the cheque only raises rebuttable presumption of having been issued for consideration. Thus at the stage of grant of leave to defend, it has to be seen, in which case an opportunity for rebutting the presumption is to be given. Merely because the suit is filed against the legal representatives of the drawer, is no ground for grant of leave to defend, if otherwise the Court is convinced that no case for giving an opportunity for rebutting the presumption is made out. The contention of the Counsel for the defendant that, whenever the suit is against legal representatives, leave has to be granted, thus cannot be accepted.”

35 Thus, the Court in **Vijay Singh** emphasised that while acknowledging that suits could be maintained against legal heirs, the mere possession of cheques signed by the deceased would not automatically entitle the holder to



summary judgment, particularly where the circumstances raised legitimate doubts about the existence of debt.

36 A bare perusal of the aforesaid explicates that a summary suit under Order XXXVII of CPC may not lie against legal representatives of a deceased defendant in respect of personal obligations which do not devolve upon the estate, but where the claim is purely monetary, the estate remains liable and the legal representatives, to the extent they inherit and represent it, can be proceeded against. The liability in such cases is strictly limited to the value of the estate, and they cannot be compelled to discharge obligations beyond it. The Court must at the threshold determine whether a genuine triable issue exists in the circumstances of each case.

Factual Analysis

37 Upon the compendium of the aforesaid legal explication, a detailed perusal of the facts is necessary.

38 The Plaintiff's case, as pleaded, is that in August 2021, late Mr. Surender Malik approached her for a short-term loan of ₹5,00,00,000/-.

39 The record reflects that pursuant to a request by late Mr. Surender Malik, the Plaintiff advanced a loan of ₹5,00,00,000/- under a Loan Agreement dated 18.08.2021, carrying 12% p.a. interest, repayable within one year, with monthly interest payable by the 7th of each month through RTGS/NEFT/IMPS, disbursed *via* two cheques and secured by a Demand Promissory Note. It is stated that between 25.11.2021 to 13.07.2022, Mr. Malik availed four additional loans.

40 On 18.08.2022, the first loan was renewed through a "Renewed Term Sheet" extending repayment till 17.08.2023, supported by a fresh Demand



Promissory Note of ₹5 crores. Payments made thereafter included ₹1.5 crores towards principal on 10.04.2023 and ₹7,70,000/- towards April 2023 interest on 09.05.2023.

41 Mr. Malik expired on 09.06.2023, after which, as per Plaintiff's case, further sums were received towards principal. The Plaintiff, a senior citizen allegedly dependent on loan interest and claiming non-receipt of payment for the last 1.5 years, seeks recovery of ₹7,75,21,689/- under Order XXXVII of CPC.

42 To substantiate the claim, the Plaintiff has placed reliance on various Loan Agreements duly executed between the Plaintiff and late Mr. Surender Malik. These agreements bear the signatures of late Mr. Surender Malik, thereby establishing the existence of a binding contractual relationship and acknowledgement of the debt by him.

43 In addition to the aforesaid, the Plaintiff has produced several Demand Promissory Notes executed by late Mr. Surender Malik in favour of the Plaintiff. These instruments further evidence the promise and obligation of repayment undertaken by the said late Mr. Surender Malik towards the sums advanced. The Plaintiff has also relied upon various acknowledgement Receipts signed by late Mr. Surender Malik, which clearly record and confirm the receipt of monies from the Plaintiff under the loan transactions. Such acknowledgements serve as further proof of the admitted liability.

44 Furthermore, the Plaintiff has brought on record various WhatsApp chats and audio messages sent by Defendant Nos. 1 and 2, wherein they have expressly assured payment of the outstanding amounts due to the Plaintiff. These communications, when read in conjunction with the



documentary evidence, fortify the Plaintiff's case beyond any manner of doubt.

45 Conversely, the Defendants dispute the Plaintiff's case, terming it misleading and suppressive of material facts. It is stated by them that late Mr. Malik, husband of Defendant No. 1, father of Defendants 2 and 3, and son of Defendants 4 and 5, was in the mining and infrastructure business and had agreed to assist the Plaintiff in investing her funds.

46 According to the Defendants, the Plaintiff approached late Mr. Malik through Smt. Kiran Choudhry, seeking assistance in deploying her funds into business ventures. As per their case, being under investigation by enforcement agencies in a coal mine allocation case, she sought alternative investment channels.

47 It is also their case that relying on these representations, late Mr. Malik agreed to act solely as an intermediary to facilitate such investments as per the Plaintiff's instructions. Further, it is stated that the sums received were either reinvested or transferred to third parties nominated by the Plaintiff, and the loan agreements were allegedly a formality for accounting and tax purposes, without any binding borrower-lender relationship.

48 The Defendants maintain that all returns on investments and principal sums were duly paid back to the Plaintiff, and no liability remained outstanding. They submit that the suit is based on a mischaracterisation of the transactions and is liable to be dismissed.

49 The rival submissions of the parties manifest two entirely conflicting narratives regarding the nature of the impugned transactions. The aforementioned rival narratives strike at the very foundation of the



Plaintiff's cause of action and thus make the dispute unsuitable for summary determination at this stage.

50 It is also pertinent to observe that the evidentiary material relied upon by the Plaintiff, namely WhatsApp conversations and audio recordings allegedly containing assurances by Defendant Nos. 1 and 2, cannot be treated as conclusive proof at the present juncture.

51 Being electronic records, their admissibility and evidentiary value must necessarily be tested in accordance with the strict mandate of the extant laws. Unless the requisite certification and proof of authenticity are furnished, such documents cannot be relied upon in isolation to fasten liability. Similarly, the loan agreements, promissory notes, receipts, and other contemporaneous writings bearing signatures of the Defendants will require proper proof by way of examination of witnesses and cross-examination. Mere production does not suffice for conclusive proof of liability.

52 Upon the aforesaid conspectus, it is evident that the defence raised cannot be brushed aside as illusory or sham. On the contrary, the Defendants have raised substantive and *bona fide* issues touching upon material questions of fact, including: (i) the true character of the transactions; (ii) the validity and enforceability of the agreements against the legal representatives; (iii) the authenticity, admissibility, and the evidentiary value of electronic communications, amongst any other. These issues cannot be adjudicated without a full-fledged trial and subsequent to evidence being led by the parties.

53 Moreover, it is equally clear that the Plaintiff has placed on record documents, such as agreements, promissory notes, and communications,



which do *prima facie* indicate that certain financial transactions did transpire between the parties, and cannot be disregarded at this stage. While their ultimate evidentiary worth can only be tested at trial, their existence warrants a conditional leave to defend.

54 Accordingly, the present case warrants the grant of conditional leave to defend under Order XXXVII of CPC. Such a conditional leave would strike a balance between the competing interests of both parties.

55 Imposition of conditions such as deposit of a part of the suit amount, or furnishing of security, would serve the ends of justice by ensuring that the Plaintiff's claim is not rendered illusory in the event of a favourable decree, while permitting the Defendants an opportunity to establish their defence at trial.

56 Thus, without expressing any conclusive opinion, the Court deems it appropriate to grant conditional leave to defend to Defendants. Furthermore, in the interest of expeditious disposal and to safeguard the ends of justice, the Court imposes the following conditions upon Defendants:

(i) Defendants shall not seek any unwarranted or dilatory adjournments; The proceedings shall be expedited, with all parties extending full cooperation to ensure timely progress.

(ii) Defendants shall place on record, before the next date of hearing, a duly sworn affidavit disclosing their assets in compliance with applicable legal requirements;

(iii) Defendants shall deposit a sum of ₹ 3,00,00,000/- with the Registrar General of this Court within six 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.



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60. Accordingly, the instant application stands disposed of.

CS(OS) 360/2024, I.A. 10148/2024, I.A. 30317/2024, I.A. 30859/2024, I.A. 30949/2024, I.A. 34332/2024, I.A. 46912/2024 and I.A. 49224/2024

1. Let the matter to continue to proceed before the concerned Joint Registrar on 14.10.2025.
2. Thereafter, list before the Court on the date to be assigned by the concerned Joint Registrar.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 25, 2025