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

Judgment reserved on: 02.09.2025

Judgment pronounced on: 13.10.2025

\+ RFA(OS) 45/2025 and CM APPLs. 44888/2025 & 44891/2025

M/S SURGE INDUSTRIES LTD AND ORS. .....Appellants

Through: Mr. Suman K. Doval and Mr. Lakshay Chaudhary, Advocates

versus

KAMAL GUPTA AND ANR .....Respondents

Through: Mr. Akhil Sibal, Senior Advocate with Mr. Sparsh Aggarwal and Ms. Ridhi Bajaj, Advocates with Respondents in-person

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Regular First Appeal, under Section 96 of the **Civil Procedure Code, 1908**[1], read with Section 10 of the Delhi High Court Act, 1996, has been filed assailing the **Judgement and Decree dated 29.05.2025**[2] passed by the learned Single Judge. By the said judgment, the learned Single Judge allowed I.A. No. 12254/2025 in CS(OS) 694/2024, filed by the **Respondents herein**[3] under Order XXXVII

[1] CPC
[2] Impugned Judgement
[3] Respondents/Plaintiffs

Rule 3(6)(b) of the CPC, and consequently decreed the suit in their favour against the **Appellants herein**[4].

2. By way of the Impugned Judgment, the learned Single Judge decreed the suit in favour of the Plaintiffs for a sum of Rs. 3,17,18,750/- along with interest at the rate of 6% per annum on the decretal amount, payable until realization.

3. At the outset, it is apposite to note that *vide* Judgment dated 07.01.2025, the learned Single Judge, while adjudicating I.A. No. 41946/2024 filed by the Defendants under Order XXXVII Rule 3(5) of the CPC seeking leave to defend, granted conditional leave to defend. The said leave was granted subject to the Defendants furnishing security to the extent of Rs. 2 Crores, either by way of movable property, immovable property, or a combination thereof, to the satisfaction of the learned Registrar General of this Court, within four months from the date of the Judgment.

4. The failure of the Defendants to comply with the aforesaid condition prompted the Plaintiffs to move I.A. No. 12254/2025 under Order XXXVII Rule 3(6)(b) of the CPC, which culminated in the passing of the Impugned Judgment and decree dated 29.05.2025.

5. For the sake of clarity, uniformity and consistency, the parties in the present Appeal shall hereinafter be referred to in accordance with their respective ranks in the suit.

BRIEF FACTS:

6. Defendant No. 3 is the daughter of the paternal aunt of Plaintiff No. 1, i.e., the cousin sister of Plaintiff No. 1. Defendant No. 2 is the

[4] Appellants/Defendants

brother-in-law of the Plaintiffs, being the husband of Defendant No. 3. Defendants Nos. 2 and 3 are partners in Defendant No. 1 firm, to whom the Plaintiffs had advanced various loans.

7. For repayment of the loan, the parties executed a "Loan Agreement" dated 12.04.2024. The Agreement records that the Defendants issued two cheques towards repayment of Rs. 2,00,00,000/-. The Plaintiffs allege that the Defendants subsequently issued two additional cheques, bringing the total number of cheques to four, aggregating to Rs. 2,90,00,000/-, and that the Defendants also issued one further cheque specifically in respect of accrued interest.

8. All of the said cheques were presented for payment and were dishonoured. Consequently, the Plaintiffs instituted the present suit on 26.08.2024 for recovery of Rs. 3,17,18,750/-, together with interest at 15% per annum on the decretal amount until realization. The Plaintiffs base their claim on the following evidence:

(a) The written Loan Agreement dated 12.04.2024, executed by the parties, wherein the Defendants acknowledged the issuance of cheques;

(b) The dishonoured cheques themselves; and

(c) Contemporaneous WhatsApp communications and recorded conversations in which the Defendants are said to have admitted their liability.

9. Summons in the suit were issued to the Defendants on 30.08.2024. On the same date, the learned Single Judge passed an order restraining the Defendants from creating any third-party interests in respect of their share in the properties.

10. On receipt of the summons, the Defendants entered appearance

on 10.09.2024 and filed an application seeking leave to defend. After completion of pleadings and hearing in that application, the learned Single Judge, by order dated 07.01.2025, granted conditional leave to defend subject to the Defendants furnishing security for a sum of Rs. 2 Crores, either in the form of movable or immovable assets, or a combination of both, to the satisfaction of the Registrar General of this Court, within a period of four months. The relevant portion of the said judgment reads as under:

> "**23.** Heard learned Counsel appearing for the Parties and perused the material on record.
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> **24.** There is no dispute that the present suit is maintainable under Order XXXVII of CPC. The suit is based on the loan Agreement dated 12.04.2024 entered into between the parties and cheques have been issued by the Defendants. The short question that is to be decided in the present application is whether the Defendants have made out their case for a grant of leave to defend or not.
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> **25.** Order XXXVII of CPC provides for a summary procedure in respect of certain suits. The purpose of Order XXXVII is that the Defendant is not, as in an ordinary suit, entitled to the right to defend the suit and must apply for leave to defend within the prescribed period of ten days from the date of service of summons on him and leave to defend in that suit is granted only if the affidavit filed by the Defendant discloses such facts as the Court may deem sufficient to grant the leave. The object underlying the summary procedure is to prevent unreasonable obstruction by the Defendant who has no defence. The procedure of summary procedure applies to suits upon bills of exchange, hundies and promissory notes and suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest which arises out of a written contract or on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt or a guarantee, where the claim is against the principle in respect of debt or liquidated demand only.
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> **30.** In B.L. Kashyap & Sons Ltd. v. JMS Steels & Power Corpn., **(2022) 3 SCC 294**, the Apex Court relied on IDBI Trusteeship Services Ltd. (supra) and observed as under:
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> > *"**33.** It is at once clear that even though in IDBI Trusteeship [IDBI Trusteeship Services Ltd. v. Hubtown Ltd., (2017) 1 SCC 568 : (2017) 1 SCC (Civ) 386] , this Court has observed that the principles stated in para 8 of*

Mechelec Engineers case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687] 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." (emphasis supplied)

31. The present suit is based on four undated cheques that were issued by the Defendants. SECTION 138 of the Negotiable Instrument Act creates a presumption that cheques were issued by the Defendants in discharge of debts. A Division of Bombay High Court in Rajesh Laxmichand Udeshi v. Pravin Hiralal Shah, **2012 SCC OnLine Bom 2181** has observed as under:

*"**14.** When a summary suit instituted is based on a cheque which is dishonoured, effect of Sections 138 and 139 of Negotiable Instruments Act raising statutory presumption that the cheque was issued in discharge of a liability, is a relevant consideration to be kept in mind. The said Sections cast a burden upon the defendant to rebut the presumption. Summary suits instituted on cheques which are dishonoured will, therefore, stand on a higher footing than summary suits instituted on the basis of other documents. In such cases, the Court will have to take into consideration the statutory presumption which is raised when the cheques are dishonoured. The object behind providing a statutory presumption under the Negotiable Instruments Act has to be kept in mind while judging the credibility of a defence raised by the defendant in*

summary suit. Thus, the test of more than "shadowy" and less than "probable" as adverted to by the Apex Court cannot apply in cases where the law requires a person to explain certain state of affairs. The judgments which are relied upon by the learned counsel do not consider the effect of the statutory presumptions raised under the Negotiable Instruments Act when a cheque is dishonoured. In our opinion, when a cheque is dishonoured, the Court is enjoined with the duty to scrutinize the defence put up by the defendant with a much higher degree of care and circumspection. Such summary suits cannot be treated as on par with the cases instituted on contracts or invoices etc. where such statutory presumptions do not operate."

32. Applying the aforesaid law laid to the facts and circumstances of the case, it can be seen that the loan advanced by the Plaintiffs was anything but a friendly loan as normally friendly loans do not carry a 15% interest, However, this observation would have no bearing on the issue as to whether leave to defend is to be granted or not. The plaint discloses that periodical loans were advanced and interest was being paid periodically as well. The ledger account has not been produced by the Plaintiffs to demonstrate as to how much amount was advanced and how much interest has been returned. The list of documents filed by the Defendants gives the ledger of Defendant No.2 which indicates that as on 30.06.2024, a sum of Rs.99,72,500/- was due and payable to each Plaintiff Nos.1 and 2. An Agreement dated 12.04.2024 was entered into between the parties wherein it is stated that a sum of Rs.2,00,00,000/- is due and payable on the day when the Agreement was signed. For a sum of Rs.2,00,00,000/-, four undated cheques for Rs.2,90,00,000/- were taken by the Plaintiffs from the Defendants and, therefore, there is certainly a mismatch between the amount due and the amount for which cheques were issued by the Defendants. There is some force in the contention of the learned Counsel for the Defendants that if interest is calculated @15% per annum then the amount of Rs.2,90,00,000/- would become due and payable in March, 2029 only. This does raise an issue to be considered in trial.

33. The ledger filed by the Defendants and the income tax returns indicate that approximately Rs.2,00,00,000/- is due and payable. As per the laid down by the Apex Court in B.L. Kashyap & Sons Ltd. (supra) leave to defend is the ordinary rule and denial of leave to defend is an exception. Considering the fact that the Defendants themselves acknowledge the debt of Rs.2 Crores that is due and payable for which cheques were issued, this Court is inclined to grant conditional leave to defend to Defendants, subject to the Defendants furnishing security for a sum of Rs.2 Crores either in the form of movable or immovable property or in the combination of both to the satisfaction of the Registrar General of this Court

within a period of four months from today.

34. This Court appreciates the efforts taken by Mr. Goutham Shivshankar, learned Counsel, who was requested by this Court to appear for the Defendants. Mr. Goutham Shivshankar has assisted this Court remarkably well.

35. With these observations, the application is disposed of.

……"

11. Subsequent thereto, the Plaintiffs moved I.A. 2038/2025 under Order XXXVIII Rule 5 CPC, seeking directions to the Defendants to disclose their assets and to restrain them from creating third-party rights in the assets detailed in paragraph 5 of the application. Notice was issued by the Court on 24.01.2025. Though the Defendants filed a reply, the disclosures therein did not inspire confidence. Consequently, by Order dated 29.04.2025, the Defendants were directed to file a further affidavit giving details of their immovable and movable assets.

12. Upon expiry of the four-month period stipulated under the Judgment dated 07.01.2025, and the Defendants' failure to furnish security as directed, the Plaintiffs filed I.A. 12254/2025 under Order XXXVII Rule 3(6)(b) CPC seeking a decree forthwith.

13. As apparent from the record, the Defendants, on their part, filed I.A. 12418/2025 seeking an extension of six months' time to comply with the directions in the judgment dated 07.01.2025.

14. After hearing both sides, the learned Single Judge, by the Impugned Judgment dated 29.05.2025, allowed the Plaintiffs' application under Order XXXVII Rule 3(6)(b) CPC and decreed the suit in their favour. The relevant portion of the Impugned Judgment reads as under:

"**9.** Heard learned Senior Counsel for the Plaintiffs and learned counsel for the Defendants.

10. This is a summary suit filed by the Plaintiffs under Order

XXXVII Rule 3(6)(b) of CPC seeking a decree for recovery of money in favour of the Plaintiffs for a sum of Rs.3,17,18,750/- along with interest @ 15% per annum, both pendente lite and future. It is the case of the Plaintiffs that they extended a loan of Rs. 2,90,00,000/- to Defendants No. 2 and 3, who are partners of Defendant No. 1 firm, in the year 2020. Loan was to carry interest of 15% per annum. Upon the Defendants defaulting in repayment of the loan, a Loan Agreement was executed between the parties, since Defendants had acknowledged the debt. Defendants admittedly issued four cheques for repayment of the loan, however, they were dishonoured on presentation for the reason 'funds insufficient' and 'other reasons'. Plaintiffs sent a demand notice dated 26.07.2024 to the Defendants, but there was no response.

11. Triggered by the fact that Defendants sold the industrial unit at Village Ogli, Tehsil Nahan, Kala Amb, District Sirmour, Himachal Pradesh, which was the registered office of Defendant No. 1, despite the property being mortgaged with Indian Bank, as per the bank's sanction letter dated 20.10.2023 and apprehending that Defendants may create third party rights in the other two properties, Plaintiffs approached this Court. At the time of issuing summons on 30.08.2024, Court restrained the Defendants from creating third party rights in the two properties falling to their share and the order continues till date.

12. On receiving the summons, Defendants entered appearance on 10.09.2024 and filed an application for leave to defend on 28.09.2024. By a detailed judgment dated 07.01.2025, Court granted conditional leave to defend to the Defendants, subject to their furnishing a security for a sum of Rs. 2 crores, either in the form of movable or immovable property or in combination of both to the satisfaction of Registrar General of this Court within a period of four months, noting the fact that Defendants acknowledged the debt of Rs. 2 crores and this was also reflected in their ledger and Income Tax Returns.

13. Indisputably, Defendants did not furnish the security of Rs. 2 crores within four months from the date of the order, which was a pre-condition to grant of conditional leave to defend. Order XXXVII Rule 3(6)(b) of CPC clearly provides that if the Defendant is permitted to defend as to the whole or any part of the claim, the Court may direct him to give such security and within such time as may be fixed by the Court and on failure to give such security within the time specified by the Court, Plaintiff shall be entitled to a judgment forthwith. Plain reading of this provision leaves no doubt that the rule admits of no exception and provides no window to the Court to grant extension of the time granted to comply with the pre-condition and/or to waive or relax the pre-condition. On a mere failure of the Defendant to give the security as directed by the Court, Plaintiff becomes entitled to a judgment.

14. Defendants have acknowledged the debt, which is a finding in

the judgment dated 07.01.2025. Even today, there is no denial that monies are owed to the Plaintiffs. Defendants only seek extension of time to furnish security of Rs. 2 crores, which was a pre-condition to grant of leave to defend. I am of the considered view that in light of the rigour of Order XXXVII Rule 3(6)(b) of CPC and the use of expressions 'shall' and 'forthwith', this Court has no discretion to grant extension to the Defendants to furnish the security after the expiry of four months from 07.01.2025, when the Court directed furnishing of the security as a pre-condition to grant of leave to defend.

15. In this context, Mr. Akhil Sibal, learned Senior Counsel for the Plaintiffs has rightly taken the Court through the judgment in ***Renu Promoters (supra)***, where the Court held as follows: -

> *"**12.** On a plain reading of above quoted sub-rule, it is clear that when the defendant is permitted to defend the suit with a condition and such condition is not complied with within the time as specified by the Court, the plaintiff shall be entitled to judgment forthwith. The sub-rule does not speak of further extension of time by the Court. The use of expression "shall" and "forthwith" in the provision does not leave any discretion with the Court to extend time in case the condition subject to which the leave is granted is not complied with within the time specified by the Court, rather it makes obligatory for the Court to pass the judgment forthwith.*
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> ***13.** The Hon'ble Supreme Court in Wada Arun Asbestos (P) Ltd. v. Gujarat Water Supply & Sewerage Board, (2009) 2 SCC 432, has observed that where a conditional leave is granted and the conditions therefore are not complied with, a judgment in favour of the plaintiff can be passed.*
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> ***14.** I am also supported in my view by the decision of a coordinate bench of this Court in Navjot Singh (supra). In the said case, an appeal had been preferred against the judgment and decree passed by the learned trial court under Order XXXVII Rule 3(6)(b) of the CPC on non-compliance of conditions subject to which leave was granted. In the appeal, this Court had observed as under:*
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> > *"22. **In this factual background, the learned Trial Court has followed the procedure of Order XXXVII Rule 3(6)(b) of the CPC, which entitles the plaintiff to judgment forthwith if the defendant fails to comply with any condition upon which leave to defend has been granted**. This procedure has been recognized inter alia in the judgment of the Supreme Court in Wada Arun Asbestos (P) Ltd. v. Gujarat Water Supply & Sewerage Board, (2009) 2 SCC 432, para 15 and of this Court in Vikas Bhatia v. Nikhil Chohan, 2014 SCC OnLine Del 3100, para 6."*
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> *(emphasis supplied)*

> **16.** In light of the provisions of Order XXXVII Rule 3(6)(b) of CPC and on a conspectus of the factual matrix obtaining in the present case as also the judgment in ***Renu Promoters (supra)***, Plaintiffs are held entitled to a judgment forthwith and no extension can be granted to the Defendants for furnishing the security of Rs. 2 crores.
> **17.** Accordingly, this application is allowed and disposed of.
> **I.A. 12418/2025**
> **18.** This is an application by the Defendants seeking extension of time to furnish the security in terms of judgment dated 07.01.2025.
> **19.** For the reasons stated above, this application is dismissed.
> **CS(OS) 694/2024 & I.As. 37876/2024, 40859/2024, 47990/2024, 2038/2025**
> 20. The suit is decreed in favour of the Plaintiffs for a sum of Rs.3,17,18,750/-. Plaintiffs are held entitled to interest @ 6% per annum from the date of the decree till actual payment.
> 21. Registry is directed to draw up the decree sheet.
> 22. Suit stands disposed of along with all pending applications.
> 23. Date of 30.07.2025 stands cancelled."

15. Aggrieved by the Impugned Judgment, the Defendants have preferred the present Appeal.

SUBMISSIONS OF THE APPELLANTS/ DEFENDANTS:

16. The learned counsel for the Defendants would, at the outset, submit that the learned Single Judge, while passing the Impugned Judgment, committed a grave error in failing to appreciate and apply the special procedure prescribed under Order XXXVII of the CPC, and that such an omission has fatally vitiated the decision under challenge.

17. He would contend that Order XXXVII specifically requires the filing of original documents along with the institution of the summary suit, but in the present case the Plaintiffs admittedly failed to file the original copies of the cheques on which their claim is founded, and despite this glaring defect the learned Single Judge not only ignored

the mandatory requisites of the provision but also proceeded to pass the Impugned Judgment without either discussing this aspect or independently perusing the documents filed in support of the Plaintiffs' case.

18. To fortify this submission, reliance would be placed by the learned counsel for the Defendants upon the judgment of the Hon'ble Supreme Court in ***Neebha Kapoor v. Jayantilal Khandwala***[5] and the judgment of this Court in ***Goyal Mg Gases Ltd. Vs. Premium International Finance***[6], both of which emphasize strict adherence to procedural requirements under Order XXXVII.

19. Learned counsel for the Defendants would further argue that the Plaint cannot be treated as gospel truth, and that the learned Single Judge was duty-bound to independently assess the merits of the case and apply judicial mind before passing the judgment, particularly because under Order XXXVII the principal sum claimed must be certain, determinative, and free from ambiguity, whereas in the present case the Loan Agreement refers only to two cheques while the Plaintiffs' claim is based on four cheques forming the alleged principal sum, thereby creating an inherent inconsistency which undermines the foundation of the claim; and for this proposition reliance would be placed on ***Ajay Shaw v. HDFC Ltd.***[7].

20. In continuation, the learned counsel for the Defendants would submit that the learned Single Judge erred in decreeing the suit in favour of the Plaintiffs by placing undue reliance upon what was described as the Defendants' "admission of liability", and that such

[5](2008) 3 SCC 770

[6] 138 (2007) DLT 259

[7] 2018 SCC OnLine Del 9913

reliance overlooks the well-settled principle of civil jurisprudence that mere admission of a document in evidence does not *ipso facto* amount to proof of its contents, since admission of a party's document may in certain circumstances preclude challenge to its admissibility but does not dispense with the requirement of proving the document in accordance with law; and in support of this proposition reliance would be placed upon ***Sudhir Engineering Company v. Nitco Roadways Ltd.***[8].

21. Learned counsel for the Defendants would also emphasize that the learned Single Judge, by a prior judgment dated 07.01.2025, had himself granted conditional leave to the Defendants, thereby acknowledging the existence of merit in their case, but this aspect was subsequently brushed aside and hastily disregarded while passing the Impugned Judgment, thereby causing grave prejudice to the Defendants.

22. Learned counsel for the Defendants would next contend that the learned Single Judge placed undue and misplaced emphasis on the expression "shall" occurring in Rule 3(6)(b) of Order XXXVII CPC, and that the words "shall" and "forthwith" in the said rule are to be interpreted contextually as "as soon as may be" rather than as "immediately" as construed by the learned Single Judge, and that the interpretation adopted unduly elevated procedural formality over substantive justice which, coupled with the emphasis on alleged "admitted liability", effectively deprived the Defendants of the procedural safeguards built into Order XXXVII itself.

23. In furtherance of this submission, the learned counsel for the

[8] 1995 (34) DRJ 36

Defendants would argue that the application filed by the Defendants seeking extension of time to comply with the Judgement dated 07.01.2025 ought to have been allowed, and that the learned Single Judge erred in discarding the application solely on the basis of a strict reading of the expressions "shall" and "forthwith" under Order XXXVII Rule 3(6)(b), thereby overlooking the saving powers vested in the Court under Sections 148 and 151 of the CPC.

24. Learned counsel for the Defendants would assert that such a rigid and pedantic interpretation of procedural provisions is contrary to settled law, for procedure is always intended to be a handmaiden of justice and not its mistress, and the rules must therefore be interpreted in a manner that advances the cause of justice rather than defeats it; and in support of this proposition reliance would be placed upon ***Aparna Choudhrie Kala v. Vaibhav Kala***[9].

25. Learned counsel for the Defendants would submit that the Defendants are not precluded from questioning the Judgment dated 07.01.2025 by which conditional leave was granted, even though the same was not challenged at the relevant time, and that they are entitled to assail that Judgment at this stage particularly because the Impugned Judgment proceeds on its basis; and for this proposition reliance would be placed upon the judgment of the Hon'ble Supreme Court in ***Wada Arun Asbestos (P) Ltd. v. Gujarat Water Supply & Sewerage Board***[10].

<u>SUBMISSIONS OF THE RESPONDENTS/ PLAINTIFFS</u>:

26. *Per contra*, the learned Senior Counsel for the Plaintiffs, while

[9] 2024 SCC OnLine Del 876
[10] (2009) 2 SCC 432

vehemently supporting the decision of the learned Single Judge, would contend that the Impugned Judgment has rightly been decreed on account of the Defendants' failure to comply with the condition imposed while granting them leave to defend *vide* Judgment dated 07.01.2025, and that such non-compliance itself justifies the decree in favour of the Plaintiffs.

27. He would further urge that the Judgement dated 07.01.2025 was never assailed by the Defendants at any stage, either contemporaneously or in the present Appeal, and that such omission amounts to an implied acceptance of the conditions imposed by the learned Single Judge; and consequently, once conditional leave was granted subject to specific terms and the Defendants failed to comply, the operation of Order XXXVII Rule 3(6)(b) of the CPC was automatically triggered, thereby entitling the Plaintiffs to a decree.

28. In support of this submission, the learned Senior Counsel for the Plaintiffs would place reliance upon the judgments of this Court in ***Aggarwal Developers vs. Icon Buildcon***[11], ***Renu Promoters vs. Govind Radhe***[12], as well as the judgment of the Bombay High Court in ***D. Shanalal vs. Bank of Maharashtra***[13] , and would submit that these authorities reiterate the principle that failure to comply with the conditions attached to leave to defend necessarily results in a decree under Order XXXVII.

29. He would further endorse the interpretation adopted by the learned Single Judge with respect to Order XXXVII Rule 3(6)(b) of the CPC and would contend that there exists no provision in law

[11] 2013 SCC OnLine Del 3421
[12] 2024 SCC OnLine Del 6792
[13] AIR 1989 Bom 150

which permits alteration, modification, or extension of the conditions of conditional leave once granted, and that to allow such alteration at the behest of the Defendants would defeat the very object and efficacy of the summary procedure contemplated under Order XXXVII of the CPC.

30. Learned Senior Counsel for the Plaintiffs would then respond to the argument advanced by the Defendants that the Plaintiffs had failed to place original and complete documents before the learned Single Judge, and would submit that such a contention is both misplaced and factually untenable, since the record itself belies the allegation.

31. Learned Senior Counsel for the Plaintiffs would point out that the Defendants themselves, in their Affidavit filed with the leave to defend application, specifically in ground (N), admitted the issuance of four cheques, and that the same admission is reiterated even in the present Appeal, which amounts to a clear acknowledgment of liability. He would further rely upon ***Transasia (P) Capital Ltd. v. Parmanand Agarwal***[14] to contend that under the prevailing Rules of this Court, where pleadings are filed through Online e-filing, there is no requirement for Plaintiffs to file originals at the stage of institution of the plaint, the only requirement being that the originals be preserved for production at a later stage when directed and in this case.

32. Learned Senior Counsel would categorically distinguish the judgments cited by the Defendants and contend that they are wholly inapplicable to the facts and circumstances of the present case, and that none of them dilute or undermine the correctness of the reasoning adopted by the learned Single Judge in passing the Impugned

[14] 2022 SCC OnLine Del 4592

Judgment.

ANALYSIS:

33. We have heard the learned counsels for the parties and carefully perused the pleadings as well as the documents placed before us.

34. At the outset, before delving into the specific controversies raised in the present Appeal, we deem it apposite to examine the special procedure contemplated under Order XXXVII of the CPC. Though comprising only seven Rules, Order XXXVII operates on a wholly distinct tangent, as it consciously bypasses the lengthy procedural framework of the "Civil Procedure Code" and provides for a fast-track adjudicatory mechanism.

35. Order XXXVII of the CPC is *sui generis* in nature. It lays down a special mechanism where the regular, detailed procedure prescribed under the CPC is set aside, and a summary procedure is provided for certain specified classes of disputes, squarely falling within Rule 1(2) thereof. Rule 1(1) designates the Courts competent to adjudicate such disputes, while Rule 1(2) enumerates the classes of suits to which this procedure applies.

36. Sub-rules (1) and (2) of Rule 2 prescribe the essential particulars that must be contained in the plaint of such suits. Rule 2(3) mandates the appearance of the defendant and also prescribes the legal consequences flowing from non-appearance.

37. Rule 3 provides the detailed procedure relating to the appearance of the defendant, the manner in which the proceedings are to be conducted, and imposes strict obligations on the parties. Non-compliance with these requirements carries fatal consequences. This

Rule itself contains seven sub-rules, each carrying its own independent significance.

38. Besides these, there are four additional Rules under Order XXXVII; however, they are not of material relevance in the present case. The controversy here squarely revolves around the scope and application of Rule 3(5) and Rule 3(6).

39. It is pertinent to note that Rules 1 to 3 of Order XXXVII were completely substituted by way of the 1976 amendment to the CPC. This amendment, introduced after extensive consultation, fundamentally restructured the procedure under Order XXXVII. The *Statement of Objects and Reasons* accompanying the Amending Act is self-explanatory and merits reproduction for reference:

> "The law relating to the procedure in suits and civil proceedings in India (except those in the State of J. & K. and Nagaland and the Tribal Areas of Assam and certain other areas) is contained in the Code of Civil Procedure, 1908. The Code has been amended from time to time by various Acts of the Central and State Legislatures. The Code is mainly divided into two parts, namely, Sections and Orders. While the main principles are contained an the sections, the detailed procedures with regard to the matters dealt with by the sections are specified in the Orders. Under Section 122, the High Courts have powers to amend, by rules, the procedure laid down in the Orders. In exercise of those' powers, various amendments have been made in the Orders by the different High Courts.
>
> **2.** The Law Commission, in its Fourteenth Report on the "Reform of Judicial Administration", indicated the broad lines on which the Code should be revised, but left mord e detailed examination of the revision to be undertaken separately. A detailed and comprehensive examination of the question of the revision of the Code of Civil Procedure, 1908, was undertaken by the Commission in its Twenty-seventh Report. While making these recommendations the Law Commission took into consideration the recommendations made by, it in its Fourteenth Report, the amendments made by the various State Legislatures in the body of the Code, of the amendments in the Orders by the various High Courts, and the Rules of Procedure in the United Kingdom. A Bill, incorporating the recommendations made by the Law Commission in its Twenty-seventh Report, was introduced in Parliament in 1968. That Bill

was referred to a Joint Committee of both Houses of Parliament. While the Bill, as reported by the Joint Committee, was pending before the Lok Sabha, it lapsed owing to the dissolution of the House.

3. Before re-introducing the said Bill, the Law Commission was requested to further examine the Code from the basic angle of minimising costs, avoiding delay in litigation, implementing the directive principles and resolving divergence of judicial opinions with regard to certain provisions of the Code. The Law Commission submitted its fifty-fourth Report on the Code of Civil Procedure in February, 1973. In this Report, the recommendations made by the Law Commission in its Fourteenth and Twenty-seventh Reports have also been considered.

4. The Law Commission had also recommended in its Fourteenth Report the insertion of a new Order, namely, Order XVIA, in the Code of Civil Procedure, with regard to the attendance of prisoners in Courts for the purposes of giving evidence. The Law Commission, in its Fifty-fifth Report, made recommendations with regard to the rate of interest for the period after decree and interest on costs under Sections 34 and 35 of the Code of Civil Procedure.

5. After carefully considering the recommendations made by the Law Commission in its Twenty-seventh, Fortieth, Fifty-fourth and Fifty-fifth Reports, the Government have decided to bring forward the present Bill for the amendment of the Code of Civil Procedure, 1908, keeping in view, among others, the following basic considerations, namely. —

(*i*) that a litigant should get a fair trial in accordance with the accepted principles of natural justice;

(*ii*) that every effort should be made to expedite the disposal of civil suits and proceedings, so that justice may not be delayed;

(*iii*) that the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community who do not have the means to engage a pleader to defend their cases."

(emphasis supplied)

40. Prior to the said amendment, successive Law Commission Reports had consistently recommended amendments to the CPC, with a view to meet evolving legal standards, reduce procedural hindrances, and expedite the disposal of civil suits. The 54th Law Commission Report on the CPC (February 1973), chaired by Justice P.B. Gajendragadkar, specifically proposed reforms to Order

XXXVII, particularly Rules 1 to 3. The deliberations in the said Report concerning the summary procedure read as under:

"**CHAPTER 37**
Summary Procedure

37.1. Introductory. — Or. 37 provides for summary procedure, in respect of certain suits. A suit under this Order is instituted in the ordinary form by presenting a plaint; but the summons is issued in a special form. The essence of a summary suit under Or. 37 is that the defendant is not, as in an ordinary suit, entitled as a right to defend the suit. He must apply for leave to defend within ten days from the date of service of summons upon him; and such leave will be granted only if the affidavit filed by the defendant discloses such facts as will make it incumbent upon the plaintiff to prove consideration, or such other facts as the court may deem sufficient for granting leave to the defendant to appear and defend the suit. If no leave to defend is granted, the plaintiff is entitled to a decree. The object underlying the summary procedure is to prevent unreasonable obstruction by a defendant who has no defence.

37.2. Bombay amendment. —The Order is confined to suits on negotiable instruments, but the effect of the amendments made by the Bombay High Court is practically to extend it to suits mentioned in S. 128(2)(*f*) of the Code.

37.3. Moreover, by Bombay amendment, the procedure has, to some extent, been made less rigorous by an amendment of R. 3 of Or. 37. The Bombay amendment requires a plaintiff to serve, with the writ of summons, a copy of the plaint and the exhibits and the defendant may at any time, within ten days of such service enter only an appearance in the first instance. Notice of the appearance must be given to the plaintiff's attorney and thereafter the plaintiff is required to serve on the defendant a summons for judgment, returnable in less than ten days from the date of service, supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit. It is only after the service of this additional service for judgment that the defendant is required within ten days thereof to apply for leave to defend.

37.4. In the 14th Report—of the Law Commission, a recommendation has been made for—

(*a*) amendment of the rules relating to summary procedure on the lines of the Bombay amendment; and

(*b*) extension of summary procedure to subordinate courts in important industrial and commercial towns like Ahmedabad, Asanasol, Kanpur and Jamshedpur.

37.5. The Commission, in its Report on the Code examined these recommendations and expressed the view that action under (*a*) above could be taken by the High Courts under S. 128(2)(*a*) and

action under (*b*) above could be taken by the State Governments under Or. 37 R. 1(*b*). It was, therefore, considered unnecessary to make any provision on these matters of detail in the Code.

37.6. We have considered the matter further. As we take a different view, we should deal with the matter point by point. As to extending the provisions to other cities, we note that in the 14th Report, it was observed:

> "22. A general extension of the summary procedure to all court of subordinate judges and munsifs has not been advocated nor do we recommend any such far-reaching measure. We understand that although Or. 37 has been applied to the courts of all subordinate judges and munsifs in Madras, it is not in use and has virtually become a dead letter so far as subordinate courts in mofussil of that State are concerned. The High Court of Allahabad is opposed to its general extension. The Bombay High Court is in favour of extending it to the courts in such commercial towns as are recommended by the High Court. The Civil Justice Committee made a similar proposal. Or. 37 was extended to certain courts in Bengal, Uttar Pradesh and Punjab, probably on the basis of that recommendation."
>
> "We suggest that the High Courts should extend the rules of summary procedure, *as amplified in Bombay*, to subordinate courts in important industrial and commercial towns like Ahmedabad, Asansol, Kanpur and Jamshedpur."

37.7. We have taken note of the views expressed in the 14th Report. We, however, think that the time has come for extending summary procedure to *all courts*, in the interest of expedition and not to specified towns only.

37.8. It is, in our view, also desirable to extend summary procedure to all suits mentioned in S. 128(2)(*f*) in the interest of expedition.

37.9. In our opinion, the procedural amendments made by the Bombay High Court are also useful and should be adopted.

37.10. As has been observed, having regard to the scheme of Or. 37 as amended by the Bombay High Court, it is not necessary for a defendant to obtain leave to appeal in a summary suit. He can also make applications which do not raise a defence to the suit without obtaining leave to defend.

37.11. Recommendation. —In short, our recommendations as to Or. 37 are as follows:

(*i*) Or. 37 should be extended to all courts;

(*ii*) Or. 37 *should be amended on the lines of the Bombay amendment*, so as to extend it to certain *other suits* in accordance with the Bombay amendment;

(*iii*) Further, the *procedure* under Or. 37 R. 3, should be amended as in Bombay.

37.12. Recommendation. — Accordingly, the following amendments are recommended—

(*i*) For the existing title of Or. 37, the following title should be substituted—

Summary Procedure

(*ii*) For Or. 37 R. 1 the following rule should be substituted—

"1. *Application of Order*—

(1) This Order shall apply to the following Courts, namely, —

(*a*) *High Courts, City Civil Courts and Courts of Small Causes; and*

(*b*) *subject to the proviso, other Courts*:

Provided that in respect of the courts mentioned in sub-cl. (b) above, the High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it may deem proper and may also subsequently by notification in the Official Gazette further restrict, enlarge, or vary from time to time the categories of suits to be brought under the operation of this Order as it may deem proper."

(2) *Subject to the provisions of sub-r. (1), the Order applies to the following suits, namely*: —

(a) suits upon bills of exchange, hundies and promissory notes;

(b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—

(*i*) *on a written contract or*;

(*ii*) *on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or*

(*iii*) *on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only*;

(*iii*) For existing Or. 37 R. 2, the following rule shall be substituted:

"2 (1) *A suit to which this Order applies may, if the plaintiff desires* to proceed hereunder, be instituted by presenting a plaint with a specific averment therein that the suit is filed under this Order, and that no relief not falling within the ambit of this rule has been claimed and with the inscription within brackets "(Under Or. 37 of the Code of Civil Procedure, 1908)" just below the number of the suit in the title of the suit, but the summons shall be in Form No. 4, Appendix B or in such other form as may be from time to time prescribed.

(2) In any case in which summons is in the prescribed form (viz. Form No. 4 in Appendix B), the defendant shall not defend the suit, unless he enters an appearance and obtains leave from the Court or Judge as hereinafter provided so to defend; and in default of his entering an appearance and of his obtaining such leave to defend, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be

entitled to a decree for any sum not exceeding the sum mentioned in the summons together with interest at the rate specified (if any) up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith."

(*iv*) The following shall be substituted for Or. 37 R. 3—

"3(1). In a suit to which this Order applied, the plaintiff shall, together with the writ of summons under R. 2, serve on the defendant a copy of the plaint and exhibits thereto and the defendant may, at any time within ten days of such service, enter an appearance. The defendant may enter an appearance either in person or by pleader. In either case an address for service shall be given in the memorandum of appearance and unless otherwise ordered, all summonses, notices or other judicial processes required to be served on the defendant shall be deemed to have been duly served on him, if left at his address for service. On the day of entering the appearance, notice of the appearance shall be given to the plaintiff's pleader (or, if the plaintiff sues in person, to the plaintiff himself) either by notice delivered at or sent by prepaid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

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

(3) 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, apply on such summons for leave to defend such suit. Leave to defend may be granted to him unconditionally or upon such terms as to the Judge of Court appear just.

(4) 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 and is refused, the plaintiff shall be entitled to judgment forthwith, or

(*b*) if the defendant be permitted to defend as to the whole or any part of the claim, the Court or the Judge shall direct that on failure to complete the security (if any), or to carry out such other directions as the Court or the Judge may have given within the time-limit in the Order, the plaintiff shall be entitled to judgment forthwith.

> (5) The Court may for sufficient cause excuse the delay in entering the appearance under sub-r. (1) or in applying for leave to defend the suit under sub-r. (3) of this rule."
>
> *(emphasis supplied)*

41. Pursuant to these recommendations, an amendment bill was introduced in Parliament, which was thereafter referred to a Joint Committee of both Houses. The Joint Committee submitted its report on 01.04.1976, recommending certain significant modifications to Order XXXVII, particularly with respect to Rule 3(5). The deliberations of the Committee, which are of great significance to the present case, read as follows:

> **"62. Clause 84 (Original clause 87). - (i)** The amendment made in the proviso to clause (b) of sub-rule (1) of proposed rule 1 in Order XXXVII is of a drafting nature.
> **(ii)** The Committee note that in Order XXXVII, the sequence is that summons of the suit to the defendant is issued first and, when the defendant appears, the plaintiff is required to serve on the defendant a summons for judgment. When a summons for judgment is served, the defendant is required to obtain the leave of the court to defend the suit. But this sequence has been altered by the proposed sub-rule (3) of rule 2 which requires the defendant to obtain the leave of the court to defend the suit at the stage when he enters appearance. Since this is not the intention, sub-rule (3) of rule 2 of Order XXXVII has been amended accordingly.
> **(iii)** The Committee note that the Code does not give any guidance as to the grounds on which the petition for leave to defend the suit would be refused. The Committee feel that if such leave is refused, the defendant would be deprived of the opportunity of contesting the suit and consequently he would have to suffer the decree prayed for against him. The Committee have, therefore, provided that in case the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up is frivolous or vexatious, the leave to defend the suit should be refused.
> **The Committee are also of the view that if any amount is admitted by the defendant to be due from him, leave to defend should not be granted unless the admitted amount is deposited by him in the court. Two provisos to sub-rule (5) of rule 3 of Order XXXVII have been inserted accordingly**.
>
> *****
>
> 84. In the First Schedule, in Order XXXVII, -

(i) in the heading, the words "ON NEGOTIABLE INSTRUMENTS" shall be omitted;

(ii) for rule 1, the following rule shall be substituted, namely: -

"1. (1) This Order shall apply to the following Courts, namely: -

(a) High Courts, City Civil Courts and Courts of Small Causes; and

(b) other Courts:

Provided that in respect of the Courts referred to in clause (b), the High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it deems proper, and may also, from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper.

(2) Subject to the provisions of sub-rule (1), the Order applies to the following classes of suits, namely: -

(a) suits upon bills of exchange, hundies and promissory notes;

(b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising. -

(i) on a written contract; or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.";

(iii) for rule 2, the following rule shall be substituted, namely: -

"2. (1) A suit, to which this Order applies, may if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain, -

(a) a specific averment to the effect that the suit is filed under this Order;

(b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and

(c) the following inscription, immediately below the number of the suit in the title of the suit, namely: -

"(Under Order XXXVII of the Code of Civil Procedure, 1908).";

(2) The summons of the suit shall be in Form No. 4 in Appendix B or in such other Form as may, from time to time, be prescribed.

(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance*** and in default of his entering an appearance*** the allegations in the plaint shall be

deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.';

(iv) for rule 3, the following rule shall be substituted, namely: -

"3. (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 annexures 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 notice delivered 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 judgement in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the 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, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally 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 disclosed by 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 de-fend, or if such application has been made and is 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 or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith. I
> (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.".
>
> …"

(emphasis supplied)

42. The proposed changes of the Joint Committee were thereafter fully accepted by the Parliament, resulting in the incorporation of two important provisos to Rule 3(5). These additions are of considerable significance while looking at the scope and application of Rule 3(5). The Committee's observations reflect the legislative intent, *namely*, that while safeguarding the rights of defendants by providing parameters for granting leave to defend, it must equally be ensured that where the defendant admits liability for any amount, leave to defend should not be granted unless such admitted sum is first deposited in Court. This balancing mechanism underscores the dual objective of preventing frivolous defences while ensuring fairness to genuine litigants.

43. It is against this statutory and historical backdrop that we now proceed to examine the issues raised in the present Appeal.

44. Before passing the Impugned Judgment, the learned Single Judge considered the application of the Defendants under Order XXXVII Rule 3(5) of the CPC and granted them conditional leave to defend. We consider it necessary to closely examine the significance

of the Judgment dated 07.01.2025, whereby the learned Single Judge, after scrutinising the Plaint alongside the Defendants' application seeking leave to defend and their affidavit, together with the affidavit filed under Order XXXVII Rule 3(5), imposed conditions as a pre-requisite for defending the suit.

45. The Judgment dated 07.01.2025, as extracted hereinabove, primarily held, though the following list is not exhaustive, as follows:

(a) The suit is maintainable under Order XXXVII of the CPC, being based on the Loan Agreement and dishonoured cheques issued by the Defendants.

(b) Under Order XXXVII of the CPC, leave to defend is the exception, and it is granted only when the Defendant discloses a substantial or *bona fide* defence; otherwise, denial is permissible only if the defence is frivolous or vexatious.

(c) When suits are based on dishonoured cheques, Sections 138 and 139 of the **Negotiable Instruments Act, 1881**[15], raise a statutory presumption of liability, which places a higher burden on the Defendant to rebut.

(d) There exists a mismatch between the admitted liability of about Rs. 2 Crores and the four cheques for Rs. 2.90 Crores issued by the Defendants, which raises a triable issue requiring consideration at trial.

(e) The Defendants themselves have acknowledged a debt of Rs. 2 Crores, making conditional leave to defend appropriate.

(f) Leave to defend was granted on the condition that the Defendants furnish security worth Rs. 2 Crores, by way of

[15] Negotiable Instruments Act

movable or immovable property, within four months.

46. The Defendants never questioned, by any means, this conditional leave granted by the learned Single Judge. It is pertinent to note that being a Single Judge's decision in exercise of original jurisdiction, it was well appealable in view of the law laid down by a 3-Judge Bench of the Hon'ble Supreme Court in ***Shah Babulal Khimji v. Jayaben D. Kania***[16]. The relevant portion of the said judgment is produced hereunder:

> "**113.** Thus, under the Code of Civil Procedure, a judgment consists of the reasons and grounds for a decree passed by a court. As a judgment constitutes the reasons for the decree it follows as a matter of course that the judgment must be a formal adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy. The concept of a judgment as defined by the Code of Civil Procedure seems to be rather narrow and the limitations engrafted by sub-section (2) of Section 2 cannot be physically imported into the definition of the word "judgment" as used in clause 15 of the letters patent because the letters patent has advisedly not used the terms "order" or "decree" anywhere. The intention, therefore, of the givers of the letters patent was that the word "judgment" should receive a much wider and more liberal interpretation than the word "judgment" used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the letters patent. It seems to us that the word "judgment" has undoubtedly a concept of finality in a broader and not a narrower sense. In other words, a judgment can be of three kinds:
>
> (1) *A final judgment.*— A judgment which decides all the questions or issues in controversy so far as the trial Judge is concerned and leaves nothing else to be decided. This would mean that by virtue of the judgment, the suit or action brought by the plaintiff is dismissed or decreed in part or in full. Such an order passed by the trial Judge indisputably and unquestionably is a judgment within the meaning of the letters patent and even amounts to a decree so that an appeal would lie from such a judgment to a Division Bench.
>
> (2) *A preliminary judgment.*—This kind of a judgment may take two forms—(*a*) where the trial Judge by an order

[16] (1981) 4 SCC 8

dismisses the suit without going into the merits of the suit but only on a preliminary objection raised by the defendant or the party opposing on the ground that the suit is not maintainable. Here also, as the suit is finally decided one way or the other, the order passed by the trial Judge would be a judgment finally deciding the cause so far as the Trial Judge is concerned and therefore appealable to the larger Bench. (*b*) Another shape which a preliminary judgment may take is that where the trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to maintainability of the suit, e.g., bar of jurisdiction, *res judicata*, a manifest defect in the suit, absence of notice under Section 80 and the like, and these objections are decided by the trial Judge against the defendant, the suit is not terminated but continues and has to be tried on merits but the order of the trial Judge rejecting the objections doubtless adversely affects a valuable right of the defendant who, if his objections are valid, is entitled to get the suit dismissed on preliminary grounds. Thus, such an order even though it keeps the suit alive, undoubtedly decides an important aspect of the trial which affects a vital right of the defendant and must, therefore,be construed to be a judgment so as to be appealable to a larger Bench.

(3) *Intermediary or interlocutory judgment.*— Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (*a*) to (*w*) of Order 43 Rule 1 and have already been held by us to be judgments within the meaning of the letters patent and, therefore, appealable. There may also be interlocutory orders which are not covered by Order 43 Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote. For instance, where the trial Judge in a suit under Order 37 of the Code of Civil Procedure refuses the defendant leave to defend the suit, the order directly affects the defendant because he loses a valuable right to defend the suit and his remedy is confined only to contest the plaintiff's case on his own evidence without being given a chance to rebut that evidence. As such an order vitally affects a valuable right of the defendant it will undoubtedly be treated as a judgment within the meaning of the letters patent so as to be appealable to a larger Bench. Take the converse case in a similar suit where the trial Judge allows the defendant to defend the suit in which case although the plaintiff is adversely affected but the damage or prejudice caused to him is not direct or immediate but of a minimal nature and rather too remote because the plaintiff still

possesses his full right to show that the defence is false and succeed in the suit. Thus, such an order passed by the trial Judge would not amount to a judgment within the meaning of clause 15 of the letters patent but will be purely an interlocutory order. Similarly, suppose the trial Judge passes an order setting aside an ex parte decree against the defendant, which is not appealable under any of the clauses of Order 43 Rule 1 though an order rejecting an application to set aside the decree passed ex parte falls within Order 43 Rule 1 clause (*d*) and is appealable, the serious question that arises is whether or not the order first mentioned is a judgment within the meaning of letters patent. The fact, however, remains that the order setting aside the ex parte decree puts the defendant to a great advantage and works serious injustice to the plaintiff because as a consequence of the order, the plaintiff has now to contest the suit and is deprived of the fruits of the decree passed in his favour. In these circumstances, therefore, the order passed by the trial Judge setting aside the ex parte decree vitally affects the valuable rights of the plaintiff and hence amounts to an interlocutory judgment and is therefore, appealable to a larger Bench."

*****

120. Thus, these are some of the principles which might guide a Division Bench in deciding whether an order passed by the trial Judge amounts to a judgment within the meaning of the letters patent. We might, however, at the risk of repetition give illustrations of interlocutory orders which may be treated as judgments:

(1) An order granting leave to amend the plaint by introducing a new cause of action which completely alters the nature of the suit and takes away a vested right of limitation or any other valuable right accrued to the defendant.

(2) An order rejecting the plaint.

(3) An order refusing leave to defend the suit in an action under Order 37, of the Code of Civil Procedure.

(4) An order rescinding leave of the trial Judge granted by him under clause 12 of the letters patent.

(5) An order deciding a preliminary objection to the maintainability of the suit on the ground of limitation, absence of notice under Section 80, bar against competency of the suit against the defendant even though the suit is kept alive.

(6) An order rejecting an application for a judgment on admission under Order 12 Rule 6.

(7) An order refusing to add necessary parties in a suit under Section 92 of the Code of Civil Procedure.

(8) An order varying or amending a decree.

(9) An order refusing leave to sue in forma pauperis.

(10) An order granting review.

(11) An order allowing withdrawal of the suit with liberty to file a fresh one.
(12) An order holding that the defendants are not agriculturists within the meaning of the special law.
(13) An order staying or refusing to stay a suit under Section 10 of the Code of Civil Procedure.
(14) An order granting or refusing to stay execution of the decree.
(15) An order deciding payment of court fees against the plaintiff."

(emphasis supplied)

47. From the principles culled out above, it is evident that the Judgment dated 07.01.2025, which declined unconditional leave and instead granted conditional leave to defend, was clearly appealable. The order squarely fell within the ambit of a "judgment", as explained in ***Shah Babulal Khimji*** *(supra)*, since it vitally determined the rights of the Defendants by restricting their ability to contest the suit unless security was furnished.

48. Moreover, such leave was granted in strict consonance with the second proviso to Rule 3(5) of Order XXXVII of the CPC. The Defendants, however, neither questioned nor challenged this Judgement dated 07.01.2025 before any forum. The natural and inescapable consequence is that the Defendants must be deemed to have accepted the decision in its entirety. The Judgment thereby attained finality, and the Defendants were bound to comply with the conditions imposed therein within the stipulated four months.

49. In this regard, the reliance placed by the Defendants on the decision in ***Wada Arun Asbestos*** *(supra)* is wholly misconceived. Apart from the factual dissimilarities, the said decision is inapplicable for the following reasons:

(a) The observations in that Judgment pertain to the principle that appellate jurisdiction is not ousted merely because revisional jurisdiction was not exercised against an order of leave to

defend. However, that case arose from a decision of a District Court, where no statutory appeal lays against such orders. In stark contrast, the decision dated 07.01.2025 in the present case, is by a learned Single Judge of this Court, which is directly appealable under Section 10 of the Delhi High Court Act, 1966, read with the ratio of ***Shah Babulal Khimji*** *(supra)*.

(b) Notwithstanding, even in the present appeal, the Defendants have conspicuously failed to raise any objection to the Judgment dated 07.01.2025 of the learned Single Judge. There is no prayer or pleading to that effect.

50. It is an admitted position that the Defendants never complied with the condition imposed at the time of grant of leave to defend. We now turn to examine the legal consequences of such non-compliance in terms of Rule 3(6)(b) of Order XXXVII of the CPC. For clarity and convenience, the relevant portion of the Rule is extracted hereinbelow:

> "**(6)** At the hearing of such summons for judgment, —
>
> *****
>
> **(b)** if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith."

51. The language of this provision is unambiguous and categorical. It lays down that when a Defendant, in response to a summons for judgment, discloses a *bona fide* defence, the Court may permit him to defend the suit in whole or in part. However, such permission is not absolute; it may be made conditional. The Court, to strike a balance between the Defendant's right to contest and the Plaintiff's right to avoid dilatory tactics, may direct the Defendant to furnish security or

comply with other terms within a stipulated period. If the defendant fails to comply, the statute confers an immediate and indefeasible right upon the plaintiff to obtain a decree, thereby eliminating the need for a full-fledged trial.

52. In the present case, the admitted failure of the Defendants to comply with the conditional leave to defend squarely attracts the mandate of Rule 3(6)(b) of the Order XXXVII of the CPC. Once the Defendants defaulted, no further proceedings were warranted, and the only logical consequence was the decree in favour of the plaintiff. The provision itself makes it clear that non-compliance deprives the Defendant of any right of further hearing, and the matter falls within the operation of law for the category of cases falling under Order XXXVII Rule 1(2) of the CPC.

53. The contention of the Defendants that the learned Single Judge misapplied the terms "*shall*" and "*forthwith*" is wholly devoid of merit. The word "*shall*" reflects a legislative mandate, and "*forthwith*" leaves no scope for postponement beyond what is reasonably required. Further, since the grant of leave to defend was conditional and based on a *prima facie* evaluation of facts by the learned Single Judge, failure to comply with the condition automatically extinguished the defence. In such circumstances, the learned Judge was not required to embark upon a full adversarial trial or independently reassess the Plaintiff's evidence. In our opinion, the Impugned Judgment was in consequence of the operation of law, and the argument that further scrutiny was required is, therefore, legally untenable.

54. The submission of the Defendants that the term "*forthwith*" should be interpreted as "as soon as possible" is also unavailing. Even

if such interpretation is adopted, the record shows that the learned Single Judge acted promptly and reasonably. The Impugned Judgment was passed after hearing both sides on the Plaintiff's application under Order XXXVII Rule 3(6)(b) of the CPC. Thus, the statutory requirement stood duly satisfied.

55. It is pertinent to note that the expression "*entitled to judgment forthwith*" is consistently employed across Order XXXVII, including Rules 2(3) and 3(6)(a), to signify the immediate right of the Plaintiff to a decree upon the Defendant's default in entering appearance, applying for leave to defend, or complying with conditions imposed. The scheme of the Rule leaves no doubt that once the Defendant defaults, the Plaintiff's entitlement to judgment is automatic.

56. The legislative history of the 1976 amendments introducing these provisions demonstrates the intent of Parliament to ensure the swift disposal of summary suits, especially those involving negotiable instruments and commercial claims. The Rules are meant for specific situations and must be strictly applied. Therefore, the Defendant's plea that the learned Single Judge decided the suit "*in record time*" is misconceived; on the contrary, the learned Single Judge acted in faithful adherence to the legislative intent as contemplated in the Order XXXVII.

57. We draw support from the judgment of a coordinate Bench in ***Agarwal Developers (P) Ltd.*** *(supra),* wherein it was categorically held that non-compliance with conditional leave under Rule 3(6)(b) leaves the Court with no discretion except to pass judgment forthwith. It was further clarified that a summary suit under Order XXXVII cannot be equated with an *ex parte* decree in an ordinary suit, since in

a summary procedure, the statutory consequences operate automatically. The ratio of this decision squarely applies to the present case. The relevant paragraphs of the said judgement are extracted hereinbelow:

> "**7.** The sole submission made before us by the learned counsel for the Appellant is that the interpretation given by the learned Single Judge regarding Order XXXVII Rule (3)(6)(b) CPC is contrary to the law and consequently the impugned order is liable to be set aside. It is submitted that even in an ex parte case the Court is under an obligation to look into the merits of the case and then give an ex parte judgment. It is further contended that similarly in a case of bonafide requirement under the provisions of Delhi Rent Control Act, even if leave to defend is declined the Court is under an obligation to ascertain the bonafide requirement of the landlord on merits and then to pass an eviction order or dismiss the eviction petition.
> **8.** We find the aforesaid contention of the Appellant's counsel to be wholly misconceived. The provisions of Order XXXVII Rule 3(6)(b) envisage that on the failure of the Appellant to deposit the amount required to be deposited by it as a condition to the grant of leave to defend the suit, the Court has no other option but to pass a judgment forthwith. This is the clear mandate of law and we, therefore, find no merit in the contention of the Appellant that the interpretation given to Order XXXVII Rule 3(6)(b) is contrary to the law. Further, in our opinion, an order passed in a summary suit under the provisions of Order XXXVII Rule 2CPC cannot be equated to an ex parte order passed in an ordinary suit. As regards compliance with the provisions of Order XXXVII Rule 2, we find that the said aspect has been addressed by the learned Single Judge at length in his order dated April 20, 2012 and only after considering the same, the prayer of the Appellant for grant of unconditional leave to defend the suit was not acceded to by the learned Single Judge. An appeal filed from the order of the learned Single Judge was dismissed by the Division Bench, albeit the Division Bench was persuaded to reduce the rigors of the order by directing deposit of 25% of the principal amount as against 50% of the principal amount in terms of the order of the learned Single Judge. The Special Leave Petition filed by the Appellant against the order of the Division Bench of this Court was also dismissed during the pendency of the present Appeal."

58. In addition, as rightly observed by the learned Single Judge in the Judgement dated 07.01.2025, the case involves negotiable

instruments, where Sections 138 and 139 of the Negotiable Instruments Act raise a statutory presumption in favour of the holder of the cheque. Since the Defendants failed to comply with the conditional leave, they lost the opportunity to rebut the presumption. Consequently, the presumption remains intact, further justifying the decree in favour of the Plaintiffs.

59. The argument that original cheques were not produced before the learned Single Judge is equally untenable. The Defendants admitted issuance of four cheques, and electronic copies were duly filed in accordance with the Delhi High Court (Original Side) Rules, 2018. As held in ***Transasia (P) Capital*** *(supra)*, scanned copies suffice, and originals need only be produced if specifically directed, therefore, the plea of non-production of originals cannot invalidate the Impugned Decree. The relevant portion of the said judgment reads as under:

> "**14.** On the submission of the learned counsel for the defendant no. 2, that in absence of the original documents being filed by the plaintiff, the Decree could not have been passed in favour of the plaintiff, I again find no merit. While there can be no dispute that even in absence of the defendants to enter appearance, the Decree in a Summary Suit may not be automatic and the Court must consider the claim of the plaintiff on merit, at the same time, keeping in view the position of the Rules of this Court, insistence on filing of the original documents by the plaintiff cannot be insisted upon.
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> **15.** In this regard, I may refer to Rule 1 of Chapter 4 of the Delhi High Court (Original Side) Rules, 2018, which states that all plaints are to be accompanied with documents, either in original or copies thereof. The Practice Directions also state in Clause 6.1 thereof that scanned copies of the same are to be filed, and that the party filing the same must preserve the original of the documents for production before the Court on being so directed at any time. Therefore, the Rules do not any longer require the plaintiff to file documents in originals along with the plaint.
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> **16.** In view thereof, the plea of the defendant no. 2 that the suit could not have been decreed in favour of the plaintiff in absence of the original documents being filed cannot be accepted."

60. With regard to the last contention of the Defendants concerning the applicability of Section 148 of the CPC, which empowers Courts to enlarge time, we are of the considered opinion that this provision merely confers a limited discretion upon civil courts to extend the period granted for compliance, and even that extension cannot exceed thirty days in total. Section 148 reads as under:

> "**148. Enlargement of time. —** Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in total, even though the period originally fixed or granted may have expired."

61. A bare reading of this provision makes it abundantly clear that the enlargement of time is discretionary and not mandatory, and the Court is not required to apply it *suo motu* across the board. In the present case, the learned Single Judge consciously chose not to exercise this discretion in favour of the Defendants.

62. The record reflects that the Defendants never sought an extension of thirty days within the framework of Section 148. Instead, as recorded in the Impugned Judgment, they sought a further period of six months to comply with the condition imposed while granting leave to defend. Such a request is wholly outside the scope of Section 148, which expressly limits enlargement to a maximum of thirty days. Therefore, even if the Court were inclined to exercise discretion under Section 148, it could not have accommodated the Defendants' request. Therefore, the failure to grant additional time cannot be said to have prejudiced the Defendants, since the relief they sought was itself legally impermissible.

63. Moreover, granting an extension of six months, as prayed for by

the Defendants, would have defeated the very object and legislative intent of Order XXXVII of the CPC, which provides for summary procedure in commercial matters to secure expeditious disposal and prevent undue delays. Rule 3(6)(b) of Order XXXVII of the CPC explicitly provides that upon failure to comply with the condition imposed while granting leave to defend, the Plaintiff is entitled to judgment forthwith. To allow the Defendants a six-month extension would not only violate the express limitation under Section 148 but also run contrary to the mandate of Order XXXVII, thereby undermining the efficiency of the summary procedure.

DECISION:

64. In view of the foregoing discussion, we find no merit in the Appeal. The Impugned Judgment and Decree dated 29.05.2025 passed by the learned Single Judge is in consonance with the statutory provisions and requires no interference. Accordingly, the present Appeal is dismissed.

65. The present Appeal, along with pending application(s), if any, stands disposed of in the above terms.

66. No Order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

OCTOBER 13, 2025/sm/va