



2025:DHC:4792



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 29th May, 2025*

+ CS(OS) 694/2024

KAMAL GUPTA & ANR.

.....Plaintiffs

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

versus

M/S SURGE INDUSTRIES LTD. & ORS.

.....Defendants

Through: Mr. Ninad Dogra, Mr. Pranav Sarthi,
Mr. Vishal Bharadwaj and Mr. Devesh Diwakar
Advocates.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)****I.A. 12254/2025**

1. This is an application filed on behalf of the Plaintiffs under Order XXXVII Rule 3(6)(b) of CPC, 1908 for passing a decree in favour of the Plaintiff and against the Defendants in the sum of Rs.3,17,18,750/- along with interest @ 15% on the decretal amount till payment.

2. This is a summary suit filed by the Plaintiffs for recovery of the aforesaid amount with interest. Facts to the extent necessary are that Defendants No. 2 and 3, who are partners in Defendant No. 1, approached the Plaintiffs for a friendly loan @ 15% per annum in December, 2020. Various amounts were advanced to Defendant No. 1 from December, 2020 under a Loan Agreement executed on 12.04.2024. Four cheques were issued



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by the Defendants towards payment of Rs. 2,90,00,000/-, the details of which are mentioned in the plaint and are as follows:-

S.No.	Cheque No.	Amount (in Rs.)	Drawn on
1.	835912	1,00,00,000/-	Indian Bank, Shanti Niketan
2.	835913	1,00,00,000/-	Indian Bank, Shanti Niketan
3.	835914	45,00,000/-	Indian Bank, Shanti Niketan
4.	835915	45,00,000/-	Indian Bank, Shanti Niketan

3. On deposit of the cheques by the Plaintiffs, the same were dishonoured, leading to filing of the present suit, based on the Loan Agreement; cheques issued by the Defendants, which were dishonoured; and WhatsApp chats and recorded conversations, wherein Defendants acknowledged the debt.

4. Summons were issued in the suit on 30.08.2024 and by the same order, Court restrained the Defendants from creating third party rights and interest in their share of the properties mentioned in the order. Defendants entered appearance on 10.09.2024 and filed an application for grant of leave to defend on 28.09.2024, primarily on the ground that the suit was not maintainable as the amounts were to be paid only by 31.03.2029 and the interest was reduced to 9% per annum. By a detailed judgment 07.01.2025, Court granted conditional leave to defend to the Defendants, subject to Defendants furnishing 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 the Registrar General of this Court within four months from the date of the order. It is significant to note that the Court granted conditional leave to defend to the Defendants since Defendants themselves acknowledged the debt of Rs. 2 crores as due and payable and this was also reflected in the ledgers and Income Tax Returns filed by the Defendants.



Plaint was registered as a suit and Defendants and Plaintiffs were granted time to file the written statement and replication respectively.

5. Thereafter, Plaintiffs filed an application being I.A. 2038/2025 under Order XXXVIII Rule 5 of CPC, 1908 for a direction to the Defendants to disclose the assets and for restraining them from creating any third-party rights in the assets detailed in paragraph 5 of the application, on which notice was issued by the Court on 24.01.2025 and the Defendants sought time to file a reply. Reply was filed by the Defendants but the assets disclosed did not inspire confidence and Defendants were directed to file another affidavit indicating immovable/movable assets. While this application was pending, Plaintiffs filed the present application under Order XXXVII Rule 3(6)(b) of CPC for passing a decree, on which notice was issued on 14.05.2025.

6. Mr. Akhil Sibal, learned Senior Counsel for the Plaintiffs submits that by judgment dated 07.01.2025, Court had granted conditional leave to the Defendants, subject to their furnishing security of Rs. 2 crores, either in the form of movable or immovable property or in combination of both within a period of four months. The period expired on 03.05.2025, but Defendants did not deposit the security and therefore, upon their failure to comply with the pre-condition for grant of leave to defend, Plaintiffs are entitled to a judgment forthwith in terms of Rule 3(6)(b) of Order XXXVII of CPC.

7. Learned counsel for the Defendants *per contra* submits that *albeit* it is true that Defendants were unable to deposit the security of Rs. 2 crores within the time period fixed by the Court, however, this was for reasons beyond the control of the Defendants and was not a deliberate act. Defendants are undergoing financial hardship and the bank had during the



relevant period taken possession of their immovable properties, machinery and stock, resulting in complete shut down of the business operation of Defendant No. 1. Bank had sanctioned a loan of Rs. 16.52 crores and Defendants had provided security in the form of movable and immovable assets valued at Rs. 37.56 crores. There are chances of some money being recovered by the Defendants in the near future and therefore, an extension of six months be granted for furnishing the security to the tune of Rs. 2 crores in the interest of justice. It is also argued that the very fact that Court has by a detailed judgment on 07.01.2025, granted leave to defend in a summary suit, is evidence of the fact that Defendants have a good case to defend on merits and therefore, the suit should proceed to trial.

8. Responding to this submission, learned Senior Counsel for the Plaintiffs submits that there is no provision for extension of time granted by the Court in case the condition subject to which the leave is granted, is not complied with, within the time specified by the Court and in this context, reliance is placed on the judgment of this Court in ***Renu Promoters Pvt. Ltd. v. Govind Radhe Real Estate Private Limited and Others, 2024 SCC OnLine Del 6792.***

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.

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.

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:

“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.”

(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.



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19. For the reasons stated above, this application is dismissed.

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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.

JYOTI SINGH, J

MAY 29, 2025/Shivam