

CNR No.MHKO050000442024



Summary Civil Suit No.3/2024

Satynarayan Kanhiyalal Totala

Vs.

Ramesh Rajaram Kharade

Order below Exh.15

1. Perused the application and reply filed below the same at Exh.16. Heard learned counsel Mr. Dhoot appearing for the applicant defendant as well as learned counsel Mr. Parakh appearing for the plaintiff.

2. This is an application filed by defendants as per Order XXXVII Rule 3 of the Civil Procedure Code to grant unconditional leave to defend. The defendant has submitted that, the plaintiff's claim is false and frivolous. The plaintiff's suit is not maintainable as per Order XXXVII Rule 3 of Civil Procedure Code. The defendant has further submitted that, the entire averment made by the plaintiff is false. According to the defendant, he is not entitled to any debt amount to the plaintiff. plaintiff has filed false receipts before the court. As on today no amount is due from the defendant. As such, the defendant has raised triable issue regarding the said transaction and hence in the interest of natural justice has prayed for allowing him to defend that matter. Accordingly, defendant prays for unconditional leave to defend.

3. The plaintiff has resisted the application by filing say. The plaintiff submits that, the application of defendant is false and bogus. The plaintiff submits that, the plaintiff has filed all transaction details between them. The defendant has never paid any kind of payment to the plaintiff. The plaintiff lastly submits that there is no triable issue and there is no

substantial defence. The plaintiff accordingly prays for rejection of the instant application.

4. Perused the record. Heard learned counsel for the applicant defendant and learned counsel for plaintiff. Learned counsel for applicant defendant Mr. Dhoot has submitted that, as per Order XXXVII Rule 3 proviso it is necessary to give unconditional leave to defendant to defend the suit. The defendant has raised various triable issues in the present application which are necessary to be decided after full fledged trial. The evidence of both the parties is necessary. It is within the discretionary power of this Court either to grant the application or not. He further submitted that, if the application is allowed, the plaintiff will not suffer any loss. On the contrary, if the application is rejected then the defendant will suffer irreparable loss. He lastly submitted that the plaintiff has not approached the Court with clean hands, there are various triable issues involved in the present suit. Hence, he prays for allowing the instant application.

5. Per contra, learned counsel for the plaintiff Mr. Parakh has submitted that, there is no triable issue. The application is vague. He further submitted that the defendant has come up with a false and fabricated case. He further submitted that, the entire averments made in the application are false, unreliable and therefore, as the defence appears to be sham, the application be rejected.

6. Before proceeding ahead, it would be just and proper to discuss the law laid down by the Hon'ble Apex Court in regards to summary suit and leave to defend. The Hon'ble Apex Court in case of

Mechelec Engineers & Manufacturers Vs. Basic Equipment Corpn. (1976)

4 SCC 687 has laid down the following principles relating to suits of a summary nature :

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

ii) *If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence, the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.*

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

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

v) *If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is*

entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence.”

7. Perused the record. The present application is supported by affidavit. Considering the contentions raised in the application, it is seen that the defendant has seriously disputed the transaction. It is further seen that the defendant has specifically come up with the case that there is no amount due from the defendant.

8. Upon perusal of the grounds raised by defendant, it is seen that there exists a triable issue regarding the transaction between the plaintiff and defendant. The defence appears to be probable and not unreasonable. Thus, prima facie it is seen that there are various triable issues involved in the suit. At the very outset, it is seen that the pleadings of the plaintiff and defendant are counterblast to each other. In my considered view, the defence raised by the defendant falls under the purview of point no.2 of the judgment cited *supra* which states that :

ii) “If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence, the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.”

9. The defendant has disputed the entire case of the plaintiff, material supplied by the plaintiff as well as the account statement kept by the plaintiff. Hence, in my view the defendant has come up with a triable

issue and thus, his defence cannot be at the outset termed as sham or moonshine.

10. The Hon'ble Apex Court recently in the case of **B. L. Kashyap and Sons Ltd Vs. JMS Steels and Power Corporation [C.A. No.379 of 2022] reported in (2022)3 SCC 294** has held that, "*Grant of leave to defend is the ordinary rule and denial is an exception*". The Hon'ble Court has further come to the conclusion that, "*Even in such cases of doubt or reservation, denial of leave to defend is not the rule; but appropriate conditions may be imposed while granting the leave*".

11. The defendant has raised a triable issue indicating that, he has a bonafide or a reasonable defence. Although, the defence raised by the defendant is not possibly a good defence but the facts disclosed by the defendant is sufficient to entitle him to defend. The defendant's defence does not appears to be sham or illusory or practically impossible. Therefore, the defendant in my view is entitled to leave to defend. Also, various triable issues are raised through the contentions of the present application. The defendant's application indicates that he has a substantial defence.

12. So also, in my view, if leave to defend is granted to the defendant, no irreparable loss would be caused to the plaintiff. On the contrary, a serious prejudice would be caused to the defendant if leave is not granted as the defendant would be deprived of an opportunity to prove his defence. Therefore, in my opinion considering all above mentioned aspects, it is necessary to grant opportunity to defendant to defend the suit unconditionally. Thus, considering the settled position of

law and in view of reasons cited *supra*, the defendant is entitled for unconditional leave to defend. Resultant, I proceed to pass the following order :-

ORDER

- 1] Application is allowed.
- 2] Unconditional leave to defend is granted to the defendant.
- 3] The defendant is directed to file his written statement within 30 days from the date of this order.
- 4] The present suit be registered as Regular Civil Suit.
- 5] No order as to cost.
- 6] Parties to take note.

(Dictated and pronounced in open Court)

Date : 03/07/2025
Ichalkaranji.

(Archana M. Gaikwad)
3rd Jt. Civil Judge Jr. Dn.,
Ichalkaranji.