

MHKO050027682025



ORDER BELOW EXH.23 IN SUMMARY CIVIL SUIT NO.70/2025
(Ritesh Balulgid vs. Onkar Bhoi and others)

This is an application under Rule 3(5) of Order XXXVII of the Code of Civil Procedure, 1908 for grant of leave to defend.

2. Plaintiff has filed this summary suit for recovery of an amount of Rs.95,67,030/-. Accordingly, summons was issued to the defendant as per Rule 2 of Order XXXVII of the Code of Civil Procedure, 1908. Defendant entered his appearance and filed the present application for grant of leave to defend.

3. Following points arise for my determination to which I record my findings for the reasons stated thereunder:

Sr. No.	Points	Findings
1)	Whether defences raised by the defendants are false or vexatious ?	No
2)	Whether defendants have raised substantial or fair or reasonable defences or a triable issue ?	Yes
3)	Whether defences raised by the defendants create doubt as to good faith of the defendants ?	Yes
4)	Whether defences raised by the defendants fall within the category of plausible but improbable ?	No

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|----|---|--------------------|
| 5) | Does defendants entitle for leave to defend as prayed ? | Yes |
| 6) | What order ? | As per final Order |

REASONS

4. Defendants have raised following defences for grant of unconditional leave to defend :

- a. Defendants are not liable to pay the alleged amount.
- b. There is no any transaction between plaintiff and defendant No.1 and 2.
- c. Defendant No.1 and 2 never executed three promissory notes in favour of plaintiff as alleged by him.
- d. Defendant No.1 and 2 transferred the money as per direction of plaintiff in the account of Ramesh Uttekar and Irfan Sayyad.
- e. The suit is not within limitation.

5. According to them, defendants have raised substantial and fair defences. Hence, it is prayed to grant unconditional leave to defend.

6. Application is resisted by the plaintiff by filling say on overleaf of this application. He contended that, there is no triable issue in the present matter. The defendants have made vague statements. As the defendants have accepted some amount from the plaintiff, they have no right to raise any defence. The contentions in the application are totally false and barred by estoppel. There is a no defence available to the defendants. Hence, it is prayed to reject the application.

AS TO POINT NO.1 :-

7. It is significant to note that there is nothing on record to show that defendants have admitted the claim of plaintiff in toto at any point of time. Therefore, it cannot be said that defendants have taken the defences which are contradictory to their previous admissions. Moreover, it is not the contention of the plaintiff that defendants have raised the defences which are not available to it in law. Therefore, at this juncture, it cannot be hold that defences raised by the defendants are false or vexatious. Hence, I record my finding to Point No.1 'in the negative'.

AS TO POINT NOS.2 TO 5 :-

8. According to defendants, there was no any transactions between the parties as alleged by the plaintiff. Defendants have not obtain an amount Rs.95,37,030/- from the plaintiff. On the contrary, they have transferred some amount in the account of Ramesh Uttekar and Irfan Sayyad as per the directions of plaintiff. The defendants have documentary evidence to that effect. Present plaintiff has transferred money in favour of defendant No.1 and 2 in order to invest it in Cripto Currency as per direction of the plaintiff. The plaintiff had never misappropriated the money for their own use. They never executed promissory notes in favour of plaintiff. There is a triable issue between the parties. It needs to be decided after trial.

9. In view of aforesaid facts and circumstances of the case, it is clear that defendants have raised a substantial defence and triable issue. The plaintiff has filed some documents along with Exh.3, to

show that there were transactions between the parties. However, these documents can not be considered without proof. It is significant to note that at this juncture, there is nothing on record to create the doubt as to good faith of the defendant or to show that defence raised by the defendant regarding the payment of amount falls within the category of plausible but improbable. Hence, I record my finding to Point Nos.2 to 5 accordingly.

AS TO POINT NO. 6:-

10. I have already held that defendants have raised triable issues and substantial defence. Hence, I hold that defendants are entitle to have unconditional leave to defend. Hence, I pass the following order :

ORDER

1. Application is allowed.
2. Unconditional leave to defend is hereby granted to the defendants.
3. Defendants shall file their written statement within 30 days from the date of this order.
4. Superintendent of this court is directed to register this suit as Special Civil Suit.

Ichalkaranjji.
Date : 07.07.2026.

(G. M. Nadaf)
Civil Judge Senior Division,
Ichalkaranji.