

MHKO050046362023



ORDER BELOW EXH.14 IN SUMMARY CIVIL SUIT NO. 111/2023

(Lord Vyanktesh Industries Vs. Mandhana Fabrics)

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.13,03,208/-. Accordingly, summon 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:

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether defences raised by the defendant are false or vexatious ?	...No
2)	Whether defendant has raised substantial or fair or reasonable defences or a triable issue ?	...Yes
3)	Whether defences raised by the defendant create doubt as to good faith of the defendant ?	...Yes
4)	Whether defences raised by the defendant fall within the category of plausible but improbable ?	...No
5)	Does defendant entitle for leave to defend as prayed ?	...Yes

6) What order ?

... As per final
Order

REASONS

4. Defendant has raised following defences for grant of unconditional leave to defend :

- a. There is no written contract between plaintiff and defendant.
- b. Inferior quality yarn was supplied to him.
- c. There is dispute between plaintiff and defendant regarding transactions between them which is communicated through Whatsapp.
- d. The defendant sustained loss.
- e. There is no outstanding amount against defendant whereas amount of Rs.20,60,203/- are outstanding against the plaintiff.
- f. The plaintiff has not filed documents specified in para 13 of the application.

5. According to him, defendant has raised substantial and fair defences. Hence, it is prayed to grant unconditional leave to defend.

6. Application is resisted by the plaintiff vide reply at Exh.17. Ld. Counsel for the plaintiff submitted that defences raised by the defendant are false and vexatious and they are preferred to avoid the liability of payment of due amount. The defendant has not submitted any documents to substantiate his claim. There is a no defence available to the defendant. 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 defendant has admitted the claim of plaintiff at any point of

time. Therefore, it cannot be said that defendant has taken the defences which are contradictory to his previous admissions. Moreover, it is not the contention of the plaintiff that defendant has raised the defences which are not available to it in law. Therefore, at this juncture, it cannot be hold that defences raised by the defendant are false or vexatious. Hence, I record my finding to point no.1 'in the negative'.

AS TO POINT NOS.2 TO 5 :-

8. It is pertinent to note that defendant admitted the transactions between plaintiff and himself. According to him, due to inferior quality of sizing he has sustained loss in the business. There is no outstanding amount against the defendant. However, the plaintiff is claiming that Rs.13,03,208/- is outstanding against the defendant. As defendant has paid entire amount outstanding against him, no balance amount remained to be recovered from him. There is dispute regarding the transactions between plaintiff and defendant. There is a triable issue between the parties. It needs to be decided after trial.

9. Defendant has claimed that he has paid entire amount to the plaintiff. It is pertinent to note that defendant has challenged the claim of plaintiff entirely. Therefore, it can be said that defendant has raised substantial defence and triable issue regarding it's liability to pay the amount as prayed by the plaintiff.

10. In view of aforesaid facts and circumstances of the case, it is clear that defendant has 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 paries. 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. Accordingly, I record my finding to point nos.2 to 5.

AS TO POINT NO. 6:-

11. I have already held that defendant has raised triable issues and substantial defence. Hence, I hold that defendant is 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 defendant.
3. Defendant shall file his written statement within 30 days from the date of this order.
4. Assistant Superintendent of this court is directed to register this suit as Special Civil Suit.

Date: 22.08.2025

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