

\$~28 (2022 Cause List)

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

*Date of Decision: 27<sup>th</sup> January, 2022*

+ CM(M) 87/2022

M/S PARAS FAB

..... Petitioner

Through: Mr. Sunil Choudhary, Advocate  
for Petitioner-Defendant.

versus

M/S SUKH SAGAR SILK AND SAREE

..... Respondent

Through: Mr. Parveen Kumar Aggarwal,  
Advocate for Respondent-  
Plaintiff (9873935534).

**CORAM:**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

**PRATEEK JALAN, J. (ORAL)**

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The proceedings in the matter have been conducted through video conferencing.

**CM APPL. 4619/2022 (exemption for filing certified copies of annexures).**

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

**CM(M) 87/2022 & CM APPL. 4618/2022 (stay)**

1. Issue notice. Mr. Parveen Kumar Aggarwal, learned counsel, accepts notice on behalf of respondent-plaintiff. The petition is taken up for hearing with the consent of learned counsel for the parties.

2. The petitioner-defendant assails an order dated 11.11.2021 passed by the learned District Judge, Commercial Court-02, South District, Saket Courts, New Delhi in CS (COMM) 431/2020, whereby the Trial Court has granted leave to defend under Order XXXVII of the Code of Civil Procedure, 1908 [“CPC”], conditional upon deposit of the principal amount claimed of Rs.33,02,192/-.

3. Parties will be referred to by their status in the Trial Court.

4. The plaintiff has filed the suit before the Trial Court under Order XXXVII of the CPC. The suit arises out of a claim for payment under various invoices issued by the plaintiff for supply of goods to the defendant. The plaintiff seeks recovery of an amount of Rs.40,44,452/- along with further interest @ 24% per annum from 08.11.2020 until realisation.

5. A list of invoices is contained in paragraph 4 of the plaint (at page 33 of the petition), wherein the plaintiff claims that goods worth Rs.52,88,145/- were supplied to the defendant. The copies of the invoices have been annexed to the present petition [Annexure P-9 to Annexure P-20] and have also been filed before the Trial Court. In paragraph 6 of the plaint, the plaintiff has averred that the defendant made part payments amounting to Rs.17,69,062/-. The plaintiff has claimed the principal amount of Rs.33,02,192/- on this basis, and has also claimed interest @ 24% from the respective dates of sale. The pre-suit interest has thus been calculated as Rs.7,42,260/- and a further claim for interest has been included in prayer clause (i) of the plaint.

6. In paragraph 11 of the plaint, the plaintiff has averred that a legal notice dated 07.09.2020 was served upon the defendant claiming

an amount of Rs.43,34,674/- on the aforesaid account, against which the defendant made part payment of an amount of Rs.4,50,000/-. The defendant also replied to the legal notice through counsel on 13.10.2020.

7. After receipt of summons, the defendant applied for leave to defend the suit. The defendant has taken various defences regarding maintainability of the suit on the ground that the plaintiff has not filed the complete bills as alleged by it in the plaint, that the bills do not bear acknowledgement by the defendant, that proof of actual delivery of material has not been filed, and that a suit under Order XXXVII of the CPC cannot lie in respect of pre-suit interest.

8. The Trial Court, by the impugned order, has recorded the aforesaid contentions and granted leave to defend upon deposit of the principal outstanding amount claimed by the plaintiff. In reaching this conclusion, the Trial Court has cited several decisions of the Supreme Court including those in *Santosh Kumar vs. Bhai Mool Singh*<sup>1</sup>, *Milkhiram (India) Private Ltd. and Other vs. Chamanlal Bros.*<sup>2</sup> and *Mechelec Engineers and Manufacturers vs. Basic Equipment Corporation*<sup>3</sup>.

9. Applying the principles laid down therein, the Trial Court has held that the averments in the plaint regarding the invoices, the purchases and the payments, have not been specifically denied in the defendant's application for leave to defend. At this stage, the Trial Court has not found the defence of payment having been made for the

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<sup>1</sup> (1958) SCR 1211

<sup>2</sup> AIR 1965 SC 1698

<sup>3</sup> AIR 1977 SC 577

materials received sufficient to accord unconditional leave to defend. On the question of interest, however, the Trial Court has found in favour of the defendant that the interest rate is not mentioned on all the bills placed by the plaintiff and has, therefore, limited the deposit required to the principal amount claimed.

10. I have heard Mr. Sunil Choudhary, learned counsel for the petitioner-defendant and Mr. Parveen Kumar Aggarwal, learned counsel for the respondent-plaintiff.

11. The principles governing grant of leave to defend under Order XXXVII of the CPC have recently been elaborated by the Supreme Court in *B.L. Kashyap and Sons Ltd. vs. JMS Steels and Power Corporation and Another*<sup>4</sup>. The judgments in *Milkhiram*<sup>5</sup> and *Mechelec Engineers*<sup>6</sup> referred to in the impugned order of the Trial Court, have also been dealt with in the aforesaid judgment. It may be mentioned that, in the intervening judgment in *IDBI Trusteeship Services Limited vs. Hubtown Limited*<sup>7</sup>, the Supreme Court had held that the principles laid down in *Mechelec Engineers*<sup>8</sup> had been superseded by the amendment to Order XXXVII Rule 3 of the CPC. In *B.L. Kashyap*<sup>9</sup> however, the Court has synthesised the principles laid down in *Mechelec Engineers*<sup>10</sup> and *IDBI Trusteeship*<sup>11</sup> in the following terms:-

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<sup>4</sup> 2022 SCC OnLine SC 59

<sup>5</sup> Supra (note 2)

<sup>6</sup> Supra (note 3)

<sup>7</sup> (2017) 1 SCC 568

<sup>8</sup> Supra (note 3)

<sup>9</sup> Supra (note 4)

<sup>10</sup> Supra (note 3)

<sup>11</sup> Supra (note 7)

“40. It is at once clear that even though in the case of IDBI Trusteeship, this Court has observed that the principles stated in paragraph 8 of Mechelec Engineers' case shall stand superseded in the wake of amendment of Rule 3 of Order XXXVII 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.

41. 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 bonafide 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 appear 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.

42. 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.

43. 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.”<sup>12</sup>*

12. In the present case, the plaintiff has raised a claim on the basis of unpaid invoices for material supplied. Copies of the invoices have also been placed on record. Many of the invoices bear the signature of the representative of the defendant also. The question as to whether the defence raised by the defendant at this stage entitles it to leave to defend, has been decided in its favour by the Trial Court. As far as the condition imposed is concerned, the Trial Court has found that the specific averments contained in the plaint with regard to the quantum of supply and the quantum of payment, have not been specifically denied in the application for leave to defend. Although the averments in the plaint have been traversed by bare denials, the defendant has not offered any particulars as to the amount of material supplied and the quantum of payment made, so as to controvert the allegations of the plaintiff.

13. On the question of pre-suit interest, the Trial Court has held that the issue is required to be decided upon trial. The amount of deposit has been adjusted accordingly. It may be mentioned that out of twelve invoices filed by the plaintiff, in at least five invoices, the rate of

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<sup>12</sup> Emphasis supplied

interest is in fact mentioned on the face of the invoice itself, and the invoices have been accepted by the defendant in acknowledgement whereof the representative of the defendant has also signed the same.

14. Having regard to the judgment in *B.L. Kashyap*<sup>13</sup>, I am of the view that the Trial Court has not exercised the jurisdiction vested in it arbitrarily or capriciously, so as to warrant the intervention of this Court under Article 227 of the Constitution. In the light of the pleadings and the factual situation outlined above, the defendant has raised triable issues, which can at best be characterised as implausible. The genuineness of the defence will have to be adjudicated at trial, but for the present, there does appear to be serious doubt on this score. The defendant certainly cannot be said to have such a defence as to entitle it to unconditional leave to defend.

15. In such a case, the interference of this Court would be called for only if the order of the Trial Court demonstrates any such error of jurisdiction or perversity. The limits of the scope of Article 227 of the Constitution have recently been reiterated by the Supreme Court in *Garment Craft vs. Prakash Chand Goel*<sup>14</sup>. The defendant has failed to make out a case to this high standard.

16. On the amount of deposit, Mr. Aggarwal concedes that the amount may be reduced by the sum of Rs.4,50,000/-, which was admittedly paid by the defendant to the plaintiff after the issuance of the legal notice dated 07.09.2020. Although it is the plaintiff's case that the aforesaid payment has been adjusted against interest in

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<sup>13</sup> Supra (note 4)

<sup>14</sup> 2022 SCC OnLine SC 29 [paragraph 18]



accordance with law, Mr. Aggarwal concedes that, at this stage, the amount may be reduced from the amount of deposit.

17. Finding no error of jurisdiction or perversity in the order of the Trial Court, the impugned order is therefore not liable to interference, except to the extent that the amount of deposit is reduced by Rs.4,50,000/-, i.e. the defendant is granted leave to defend, conditional upon the deposit of a sum of Rs. 28,52,192/- before the Trial Court. The amount be deposited before the Trial Court within two weeks. Subject to such deposit, the written statement filed by the defendant will be taken on record.

18. Mr. Aggarwal seeks release of the amount deposited in favour of the plaintiff. He may file an application before the Trial Court, which may be considered by the Trial Court in accordance with law.

19. The petition, alongwith the pending application, stands disposed of with these directions.

**PRATEEK JALAN, J**

**JANUARY 27, 2022**

*“Bp”*