

Mr. Santosh Kumar Garg vs Mr. Jitendra Virwani & Ors on 23 April, 2019

Author: Jayant Nath

Bench: Jayant Nath

\$~J-

* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment reserved on : 29.11.2018

Judgment pronounced on: 23.04.2019

+ CS(OS) 356/2017

MR. SANTOSH KUMAR GARG Plaintiff
Through Mr.Arvind Nigam,Sr.Adv. with
Mr.Avishkar Singhvi, Mr.Nikhil Sharma and
Mr.Mehtab Singh Sandhu, Advs.
versus

MR. JITENDRA VIRWANI & ORS..... Defendant
Through Mr. N. Ganapaty, Sr.Adv. with
Mr.Balaji Sainivasan, Mr, Ajesh Kumar Shankar
and Mr. Pratiksha Mishra, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This application is filed by the defendant under Order 37 Rule 3(5) CPC seeking unconditional leave to defend the suit.

2. The accompanying plaint is filed under Order 37 CPC for recovery of Rs.71,86,00,000/- along with interest. The case of the plaintiff is that the plaintiff and the wife of the plaintiff, namely, Mrs. Ranjana Garg had 40% shares in the company Vikas Telecom Pvt. Ltd. They entered into two share purchase agreements with Embassy Ventures Office Pvt. Ltd. (hereinafter referred to as Embassy) on 23.04.2014. The plaintiff and Mrs. Ranjana Garg agreed to sell their shareholding of Vikas Telecom Pvt. Ltd. Various agreements were executed i.e. two share purchase agreements, Escrow Agreement-I, Escrow Agreement-II and an Amendment Agreement. It is pleaded that under the Share Purchase Agreement I monies were to be deposited into a Cash Escrow Account maintained by HDFC bank. A separate Escrow Agreement dated 23.04.2014 was also executed between the same parties i.e. Embassy, the plaintiff and his wife, namely, Mrs. Ranjana Garg. Similarly, Share Purchase Agreements II was also executed and signed on 23.04.2014 wherein the balance 11% of the Share Capital owned by the plaintiff and Mrs.Ranjana Garg was transferred to Embassy. Even as per this share purchase agreement, monies were to be deposited into a cash Escrow Account maintained by HDFC Bank and a separate Escrow Agreement was executed. Monies were duly received by the

plaintiff and his wife in two tranches pursuant to the said Share Purchase Agreements.

3. The defendant in the present suit i.e. Mr. Jitendra Virwani was holding the position of a Chairman of the Embassy Group at the time when the transaction took place. A Non-Solicitation and Fee Agreement was executed between plaintiff and defendant in order to prevent the plaintiff from soliciting employees, customers, clients, vendors and/or suppliers of the Company-Vikas Telecom Pvt. Ltd. The defendant was to pay to the plaintiff in terms of Clause 4 of the said Agreement a sum of Rs. 71,86,00,000/-. Post dated cheque dated 23.07.2014 of the said sum of Rs. 71.86 crores duly signed by the defendant drawn on ING Vysya Bank, Bangalore was presented to the plaintiff under the Agreement. The defendant subsequently issued a second post dated cheque dated 24.12.2014 for a sum of Rs. 77,52,33,753/-to confirm the intention to pay, as a replacement for the initial cheque dated 23.07.2014. The second cheque included interest accrued due to the delayed payment. However, on 17.12.2014, the defendant intimated to the plaintiff that it was the obligation of the plaintiff to settle the claims of one Sh. Satish Kumar Gaur and if the same were not done, the defendant would issue stop payment instructions to stop encashment of the post dated cheque dated 24.12.2014. It is pleaded that the said letter dated 17.12.2014 of the defendant was only an excuse to wriggle out of its commitment. The plaintiff sought to encash the cheque dated 24.12.2014. However the cheque was returned unpaid with the endorsement „Payment Stopped by the Drawer . On 03.07.2017, a legal notice was sent to the defendant.

4. It is reiterated by the plaintiff that the two Share Purchase Agreements have been closed to the complete satisfaction of the plaintiff and the defendant in 2014. No complaint has been raised by any of the parties before any court or forum. The consideration for the said agreements have been accepted by the plaintiff. For the purpose of putting closure to the matter at hand, an amendment agreement was also executed between the Embassy, the plaintiff and his wife and also Vikas Telecom Pvt. Ltd. The said agreement expressly discharged the plaintiff of all representations, liabilities and/or obligations arising out of the Share Purchase Agreement. Hence, the present suit is filed for recovery of the stated sum under the Non-Solicitation and Fee Agreement.

5. I may only note that in this case initially the summons were sent by the Registry of this court as ordinary summons. The defendants filed their written statement. This court, however, on 04.12.2017 held that merely because the Registry of this court committed a mistake by sending summons on the wrong format would not divest the plaintiff of his right of pursuing a suit under Order 37 CPC. The plaintiff was given opportunity by permitting issuance of summons for judgment in terms of Order 37 CPC.

6. Pursuant to the issue of summons for judgment, the defendant filed the present application seeking unconditional leave to defend. In the said application broadly the following defences are sought to be urged:-

(i) The suit is barred by limitation. It is pleaded that the suit is filed for a recovery of sum of Rs. 71.86 cores on the basis of the Non-Solicitation and Fee Agreement dated 23.04.2014. It is stated that in terms of the Agreement, the said amount was to be paid on or before 23.07.2014. The suit is filed on 04.08.2017 and hence, the suit is

barred by limitation.

(ii) It is further stated that the suit is not maintainable for non-joinder of necessary parties. It is stated that the suit was initially filed against the present defendant, Embassy (defendant No. 2) and Vikas Telecom Pvt. Ltd.

(defendant No. 3). However, the plaintiff subsequently chose to give up their claim against the other defendants i.e. defendants No.s 3. As the Non-Solicitation and Fee Agreement dated 23.04.2014 was entered into pursuant to the Share Purchase Agreements entered into between the plaintiff, his wife- Mrs. Ranjana Garg, Embassy and Vikas Telecom Pvt. Ltd., the said defendants are necessary and proper parties and the suit is bad for non-joinder of necessary and proper parties.

(iii) It is pleaded that the suit is not maintainable under Order 37 CPC as the most crucial documents, namely, the Share Purchase Agreements have not been produced by the plaintiff at the time of filing the plaint.

(iv) It is further stated that the plaintiff has breached the terms and conditions of the Non-Solicitation and Fee Agreement dated 23.04.2014. One Mr. Satish Kumar Gaur had filed a complaint on 23.12.2014 pursuant to which the Economic Offence Division, CID, Bangalore on 23.06.2016 informed Vikas Telecom Pvt. Ltd. that the shares in question are frozen with immediate effect.

(v) It is further stated that independent of the above transaction, the plaintiff had sought a personal loan. Based on this request, in good faith, the defendant entrusted a post dated cheque dated 24.12.2014 drawn on ING Vysya Bank Bangalore for the said sum of Rs.77,52,33,753/- As the plaintiff failed to enter into appropriate paper work for the loan transaction, the defendant out of caution, issued appropriate instructions to his bankers. It is pleaded that the two cheques, namely, first cheque dated 23.07.2014 for Rs. 71.86 crores is for an entirely different transaction from the second cheque dated 24.12.2014 which is for a different transaction i.e. Rs.77,52,33,753/-. It is further pleaded that the amount of the two cheques is also different. It is stated that the plea of the plaintiff that the second cheque includes some interest element and hence the second cheque is for a higher amount is a mere belief contention not supported by any documents.

(vi) It is further stated that as a false claim was made by the plaintiff vide notice dated 03.07.2017, the defendant has filed a suit against the plaintiff and his wife before City Civil Court, Bangalore praying that the court may declare that the defendant does not owe any amount to the plaintiff.

7. I have heard learned senior counsel for the parties.

8. Learned senior counsel for the plaintiff has stressed that the second cheque dated 24.12.2014 is in continuation of the entire transaction and is for replacement of the earlier cheque dated 23.07.2014. He further stated that the plaintiff and his wife have duly performed their obligations under the Non-Solicitation and Fee Agreement dated 23.04.2014. The second cheque dated 24.12.2014 was handed over to the plaintiff on the request of the defendant for additional time to pay the said

amount. However, to wriggle out of his liability, the defendant on 11.12.2014 wrote to the bankers for stopping the payment of the said cheque. Thereafter, they wrote a communication dated 17.12.2014 claiming that one Sh.Satish Kumar Gaur has raised some complaints which are of serious nature and that the plaintiff has failed to settle the said complaint. It is pleaded that this communication is only a bogus communication to try and conjure an excuse for non payment of the dues. In fact, a complaint was filed by the said Shri Satish Kumar Gaur on 23.12.2014. It is further pleaded that a closure report of this case has been filed by the police against the said complaint in March 2017. Reliance is also placed on some of the e-mails exchanged including e-mail dated 13.09.2014.

9. Learned senior counsel for the defendant has reiterated his submissions in the application for leave to defend. He has stressed as follows:-

(i) The complaint by Mr.Satish Kumar Gaur is pending and hence, the plaintiff is in breach of its obligations.

(ii) He further stresses that the communication dated 17.12.2014 or the cheque dated 24.12.2014 is not an acknowledgement of a debt and hence, the suit is barred by limitation.

(iii) He further states that interest cannot be claimed under Order 37 CPC.

(iv) He further states that the e-mails relied upon by the plaintiff are disputed as no certificate has been filed under Section 65 of the Evidence Act.

(v) He reiterates that the Share Purchase Agreements were not filed with the plaint which caused serious prejudice to the plaintiff.

10. I may first have a look at the Non-Solicitation and Fee Agreement dated 23.04.2014, relevant portion of which reads as follows:-

"3. In consideration of the foregoing and the Non- Solicitation and Co-operation Fee as defined in Para 4 below), you have further agreed that for a period of 2 (two) years beginning from the date hereof:

(i) You, your wife or children and/or any company in which you and/or your wife has more than 50% shareholding or an ability to appoint majority of the board of directions ('Affiliates') shall not either on your account or for any other person, directly or indirectly, solicit any employees of the Company to leave his or her employment agreement with the Company, as the case may be, or yourself, directly or indirectly, hire or engage in any other manner, any employees.

(ii) Neither you nor your Affiliates shall, directly or indirectly, solicit, cause in any part or knowingly encourage any then existing customers, clients, vendor and/or

suppliers of the Company engaged in the business that the Company is currently engaged in, to cease doing business in whole or in part with the Company.

(iii) This above Non-Solicitation undertaking in (i) and (ii) above is only restricted to the city of Bangalore and this undertaking shall not apply to those employees who have already resigned from the employment of the Company and who have not been re-employed.

4. In consideration of your agreeing to the abovementioned undertakings and for other good and valuable consideration, the receipt and adequacy of which has been acknowledged by me hereunder, I hereby irrevocably undertake to make payment of a fee of Rs. 71,86,00,000/- Rupees Seventy One Crore Eighty Six Lakh Only) (" Non-Solicitation and Cooperation Fee) to you, on or before July 22,2014, without any demur or protest.

5. Further, as agreed between us, in order to secure the payment of aforesaid Non-Solicitation and Co-operation Fee to You, I am hereby issuing to you a Cheque No. 008535 for a sum of Rs. 71,86,00,000/- (Rupees Seventy One Crore Eighty Six Lakh Only) duly signed by me and drawn on my bank account with ING Vysya Bank, Infantry Road Branch, Bangalore-1. You are free to encash the same on or after July 23, 2014 and the same shall be towards the payment of the aforesaid. Non-Solicitation and Co-operation Fee, which is owed by me to you.

11. It clearly follows from the above document that the only obligation that the plaintiff had under the said Agreement was that he or his wife or children and/or any company in which he has major shareholding will not directly or indirectly solicit any employees of the company (Vikas Telecom Pvt. Ltd.) to leave his or her employment, etc. There is no allegation whatsoever that the plaintiff is guilty of breach of Clause 3(i) or 3(ii) of the said the Non-Solicitation and Fee Agreement.

12. What has been claimed by the defendant is that one Mr.Satish Kumar Gaur lodged a complaint against the plaintiff and others regarding some alleged illegality done, namely, giving false documents that they are agriculturalists and have purchased 76 acres of agricultural land. Later on when the land was acquired the plaintiff has taken compensation and used this money to start the company-Vikas Telecom Pvt. Ltd. This complaint seems to have been received by the police on 23.4.2014 much after the Share Purchase Agreements entered into and completion of the transaction. The plaintiff has also vehemently pointed out that in 2017 the police has filed a closure report. The defendant was not able to deny this contention.

13. Apparently, pursuant to this complaint, a notice dated 5.4.2016 was received from the police regarding this complaint of Mr.Gaur. Relevant part of the complaint reads as follows:-

"The Complainant Mr. Sathish Kumar Gaur has lodged a complaint against Devidas Garg, Santhosh Kumar Garg. Amitha Garg and Mithilesh Kumar Thripati and others stating that these persons have purchased more than 76 acres of agricultural land by giving false documents as they are agriculturalist and having less then Rs. 2 lack of income of per annum. Later this land was acquired by KIADB and they got

compensation from KIADB, Later on they used this money and started Vikas Telecom Limited, No.117, 3rd Main, 2nd Stage, Domilur, Bangalore. & Supreme build cap Pvt. Ltd. S-918, South Block, Manipal Centre, 47, Dickenson Road, Bangalore-560042 companies. In this way they used false documents, cheated the Government etc. In this regard a case has registered at HAL Police station in Cr. No. 973/14 U/s 466, 185. 506, 341, 120(B), 406,409, 468,471, 420 IPC and 79(A), 79(B) and 80 Karnataka Land Reforms Act 1961. Now this case is under investigation at Economics offence Division, CID, Bangaluru."

14. Hence, as per the complaint, it has been alleged that the plaintiff and some other persons have purchased the agricultural land giving false documents that they are agriculturists and their income is less than Rs.2 lacs per annum. As the said land is said to have been acquired, the said persons received compensation. The funds received from the compensation were allegedly used to start the company namely M/s Vikas Telecom Ltd. It is clear that these allegations have nothing to do whatsoever with the Non- Solicitation and Fee Agreement. These allegations do not constitute a breach of any of the terms and conditions of the Non-Solicitation and Fee Agreement. The defendants have clearly mischievously and falsely sought to connect this vague document with the Non-Solicitation and Fee Agreement.

15. That apart, I may note that it was clearly submitted before the court by the learned senior counsel for the plaintiff that a closure report has been filed regarding the above complaint by the police in March 2017. In any case, the notice that was received from the police is dated 05.04.2016. More than three years have lapsed since the said communication was received and there appears to have been no development whatsoever regarding the said complaint. This document has caused no prejudice to the defendant. It is clear that a needless red herring is sought to be raised by the defendant in a bid to try and wriggle out his own liability.

16. I may also note that the plaintiff has placed on record a number of emails exchanged between the parties. I need not refer to the numerous emails placed on record. Only one email would suffice, which is exchanged from 13.09.2014 between Ms.Nandini Garg, the daughter of the plaintiff and the defendant, which reads as follows:

"Nandini Garg
Hello Jitu Uncle
Good Morning

Sat. Sep 13, 2014

I guess dad tried contacting you and wasn't able to do so he asked me to leave a message with you. He said he understands if you re not able to arrange the fund, he wanted to let you know you that it can be worked out if you want to extend the timelines for the same given the interest considerations and replacing the PDC.

Kindly contact dad to finalize the new arrangements.

Sincere Regards, Nandini, Garg."

Jitu Virwani jitu@embassyindia.com To: Nandini Garg nandiniyashigarg@gmail.com "Ramakrishnan P.R." ramupro@embassyindia.com Can do that but am trying to have some my local clients from his past trade to give it to him as I have to collected quite a bit from the. My transaction with them might take a few weeks more.

But till then we can change it. I was to meet him in Delhi on Wednesday. Honestly I came but was busy with something and had to leave the same day.

Missed lunch at your place.

Regards Jitu Sent from my iPad"

Clearly, in the above communication, the defendant as late as in September, 2014 has confirmed his liability to pay under the aforementioned Non-Solicitation and Fee Agreement.

17. In my opinion, the aforementioned facts itself clearly and unequivocally show that the defendants are liable to pay to the plaintiff the said sum of Rs.71.86 crores. The Non-Solicitation and Fee Agreement clearly stipulates this liability. This liability also confirmed by the post-dated cheque dated 23.07.2014 for Rs.71.86 crores issued by the defendants on ING Vyasa Bank, Bengaluru. Thereafter, before expiry of the said cheque, the defendants have issued the second cheque dated 24.12.2014 for Rs.71.86 crores plus interest i.e. Rs.77,52,33,753/- to confirm their intention to pay. The communication dated 17.12.2014 sent by the defendant clearly states that the second cheque has been issued as per obligation of the Non- Solicitation and Fee Agreement. It is also claimed in the said communication that the plaintiff was to return the earlier post-dated cheque on receipt of the second cheque for Rs.77,52,33,753/-, which the plaintiff has failed to do. Clearly the defendants have unequivocally accepted their liability to pay the said stated amount.

18. (i) I may also deal with some of the other submissions raised by the learned senior counsel for the defendant. It was firstly strongly urged that the suit is barred by limitation as it is based on the first cheque dated 23.07.2014. It is pleaded that the second cheque that was issued on 24.12.2014 was for a different amount and has no connection whatsoever with the first cheque and the second cheque does not in any manner whatsoever extend the period of limitation. In my opinion, the plea as to how this second cheque dated 24.12.2014 for the sum of Rs.77,52,33,753/- was handed over to the plaintiff is completely false. As per the application for leave to defend, the said cheque was given as the plaintiff in June 2014 requested the defendant for a personal loan. Based on this request, the said post dated cheque dated 24.12.2014 is said to have been handed over to the plaintiff.

(ii) The story further goes to state that as the plaintiff failed to carry out appropriate paper work for the transaction or did not execute necessary documents, the defendant out of caution issued appropriate instructions to his bankers. The story is completely make belief and has no basis to stand on. It is illogical to even believe that the plaintiff would seek a loan from the defendant and would be satisfied by receiving a post dated cheque in June 2014 which is dated of 24.12.2014. Further, there is no correspondence or any document to show or confirm the contentions being

raised by the defendant. In contrast, the plaintiff has clearly shown the existence of the Non-Solicitation and Fee Agreement dated 23.04.2014 and the post dated cheque dated 23.07.2014 for a sum of Rs. 71.86 crores which cheque was admittedly never encashed in term of the Non-Solicitation and Fee Agreement. Thereafter, the second cheque was issued in June 2014 being a post dated cheque dated 24.12.2014 which is for Rs. 77,52,33,753/- which included interest. There is an obvious connect with the two cheques.

(iii) Further, the plea of the defendant also cannot be believed in view of letter written to the plaintiff on 17.12.2014 where the defendant accepted that the second cheque for Rs.77,52,33,753/- was issued pursuant to the Non-Solicitation and Fee Agreement. It is also claimed in the said communication that the plaintiff had failed to return the earlier cheque on receipt of the second cheque for Rs.77,52,33,753/-. In the said communication the defendant categorically states as follows:

"Despite our arrangement to .pay the amounts of Rs.71,86,00,000/- on completion of your obligation and we having deposited with you a post dated cheque for the same you did not complete the same till July 2014 and in July 2014 you had informed us that there was an additional demand for completion and as such you demanded additional payments. You were fully aware that by then my companies were heavily invested and as such having no option we agreed to the additional demand of amounts such sum amounting in all to Rs.77,52,33,753/- (Rupees Seventy Seven Crores, Fifty Two Lakhs Thirty three thousand Seven hundred Fifty Three only inclusive of service tax to be paid to you. Though it was neither a debt nor we were required to pay such amounts. Until the compliance, in order to express our bonafides we issued a post dated cheque for a sum of Rs.77,52,33,753/- (Rupees Seventy Seven Crores, Fifty Two Lakhs Thirty three thousand Seven hundred Fifty Three only) dated 24.12.2014 bearing No.008516 drawn on ING Vysya Bank Limited, Infantry Road Branch, Bangalore. The reason why the cheque was post dated was to provide you the time period that you required to comply with your obligations within that time. Though you were to return the earlier cheque on receipt of the post dated cheque for Rs.77,52,33,753/- you failed to return the same. Needless to say until you discharge your obligations there is no amount/debt due and liable to be paid by us to you." (emphasis added)

(iv) Clearly, the story about the aforementioned second cheque having been given as a loan as stated in the application for leave to defend is not mentioned in this communication. On the contrary, this communication categorically accepts that the said second cheque for Rs. 77,52,33,753/- was tendered pursuant to the earlier agreement. It also states that the cheque was post dated to provide the plaintiff additional time to comply with the obligations of the agreement. In view of the above, it is clear that the second cheque dated 24.12.2014 for Rs. 77,52,33,753/- has been tendered by the defendant in terms of the Non-Solicitation and Fee Agreement. It would also follow from the above that the defendants themselves sought extension of time in making payment of the dues in terms of the Non-Solicitation and Fee

Agreement. The defendants have issued the second cheque to fulfil its liability under the said agreement which is dated 24.11.2014.

(v) Entry 31 of Schedule 1 to the Limitation Act, reads as follows:

31. On a bill of exchange or Three years When the bill or note promissory note payable at falls due a fixed time after date The period for filing the suit is three years when the bill of exchange or note falls due. Under Section 6 of the Negotiable Instruments Act, 1881, a cheque is a bill of exchange drawn on a specified banker. The cheque in question is dated 24.11.2014. The suit would necessarily be within limitation having been filed on 04.08.2017.

19. Another plea raised by the learned senior counsel for the defendant was that necessary and proper parties to the suit have not been added as defendants. The suit pertains to the dues payable to the plaintiff under the Non-Solicitation and Fee Agreement. The only signatories to this are the plaintiff and the defendant. None of the other parties have any liability.

Pursuant to this agreement, at best, the other parties presence may have been necessary as a witness to tender evidence. But they are neither necessary nor proper parties to the present suit. There is no merit in the said plea of the defendant.

20. The another plea which has strongly been raised by the learned senior counsel for the defendant is that the plaintiff did not file the copies of the share purchase agreements at the time of filing of the plaint. These documents have been filed later on. In my opinion, the plea is a mere hyper technical plea which has no basis whatsoever. As noted above, the suit is based on the liability claimed by the plaintiff based on the Non-Solicitation and Fee Agreement. Admittedly, the terms and conditions of the share purchase agreements have been duly fulfilled. In fact there is no allegation whatsoever in the application for leave to defend about non-compliance by any of the parties of the aforesaid share purchase agreements.

21. Order 7 Rule 14 CPC reads as under:-

Order 7 Rule 14: Production of document on which plaintiff sues or relies (1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not

produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.

Hence, when a plaintiff sues on a document or relies upon documents in his possession he is to produce the same in court when the plaint is presented by him. Where a document ought to be produced in court when the plaint is presented but is not produced then such a document shall not without the leave of the court be received in evidence. The present suit is based on the Non-Solicitation and Fee Agreement and the post dated cheques. Relevant document was produced by the plaintiff. Non production of the share purchase agreement does not affect the case of the plaintiff. In any case the defendant would be in possession of the said share purchase agreements. No prejudice was caused to the defendant by non-production of the said agreement at the time of filing of the plaint. The said plea is without merits.

22. The legal position regarding grant of leave to defend is now settled by the Supreme court in the case of IDBI Trusteeship Services Ltd. vs. Hubtown Ltd.(2017) 1 SCC 568 where the Supreme Court held as follows:-

17. Accordingly, the principles stated in paragraph 8 of Mechelec's case will now stand superseded, given the amendment of Order XXXVII Rule 3, and the binding decision of four judges in Milkhiram's case, as follows:

17.1 If the Defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the Plaintiff is not entitled to leave to sign judgment, and the Defendant is entitled to unconditional leave to defend the suit;

17.2 if the Defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the Plaintiff is not entitled to sign judgment, and the Defendant is ordinarily entitled to unconditional leave to defend;

17.3 even if the Defendant raises triable issues, if a doubt is left with the trial judge about the Defendant's good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated.

Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security;

17.4 if the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such

a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5 if the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the Plaintiff is entitled to judgment forthwith;

17.6 if any part of the amount claimed by the Plaintiff is admitted by the Defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the Defendant in court."

23. I have dealt in the above paras with the submissions of the defendant. The same are clearly without merit. In my opinion, the defendant has raised no substantial or genuine defence. The defence raised is entirely frivolous and vexatious. In my opinion, the defendant is not entitled to leave to defend. The present application is accordingly dismissed. CS(OS)356/2017 A decree is passed in favour of the plaintiff and against the defendant for a sum of Rs.71,86,00,000/-. The plaintiff shall be entitled to simple interest @ 10% p.a. from the date of filing of the suit till the date of decree. The plaintiff shall also be entitled to simple interest @ 10% p.a. from the date of decree till recovery. The plaintiff shall also be entitled to cost. The suit and all pending applications, if any, also stand disposed of.

(JAYANT NATH) JUDGE APRIL 23, 2019 rb