

Conceptum Logistics India Pvt Ltd vs Samrajaya Global Shipping Services on 9 April, 2025

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 11th March, 2025
Pronounced on: 09th April, 2025

+ CS(COMM) 677/2023

CONCEPTUM LOGISTICS INDIA PVT LTDPlaintiff

Through: Mr. Amitava Majumdar, Mr.

Arvind Kumar Gupta, Mr.

Ashutosh Tiwari, Mr. Abhiesumat

Gupta, Advocates.

versus

SAMRAJAYA GLOBAL SHIPPING SERVICESDefendant

Through: Mr. Raghav Alok, Ms. Vasudha

Trivedi, Mr. Yash Gupta,

Advocates.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

I.A. 9565/2024 (Application under Order XXXVII Rule 3 Sub-Rule 5 of CPC).

1. This application has been filed under Order XXXVII Rule 3 Sub-Rule 5 of the Civil Code of Procedure, 1908 ('CPC') by defendant seeking unconditional leave to defend to contest the summary suit.

2. The plaintiff has filed the suit for the recovery of Rs. 4,70,63,169.61/- (Rs. 1,83,00,000/- as principal and Rs. 2,59,02,476.61 as interest), along with future and pendente lite interest at the rate of 24% interest per annum against defendant under the provisions of Order XXXVII of CPC.

3. The defendant received an application for issuance of summons for judgment on 23rd February 2024, which was placed before this Court on 04th March 2024.

Submissions on behalf of defendant

4. Defendant claims that it is a limited liability partnership engaged in the business of domestic and international logistic services.

5. Defendant entered into a contract with the plaintiff on 27th August 2020, for shipping 670 CBM, approximately 300 MT on a trans-shipment basis from Mumbai via Houston (Loadport) to

Angomas, Chile ('Disport'), for a consideration of USD 165,000. It was agreed that freight would be fully repaid in INR, equivalent to US Dollars, to the nominated bank account of defendant within 3 banking days after completion of loading, exclusive of any bank charges. The agreement also contains an Arbitration clause.

6. As per agreement, defendant shipped the cargo from Mumbai port on 01st September 2020, bound for Houston, USA. The cargo was booked with Bahri Logistics, and defendant paid \$74,000 (equivalent to Rs. 55,78,860/-), as freight charges to Bahri Logistics for transportation from Mumbai to Houston. Defendant also paid \$10,000 for the transfer of the cargo from its current location to the exporting vessel's hook, and further paid \$725 as an entry fee and messenger fee.

7. It was stated by defendant in leave to defend application that post the agreement dated 20th August 2020, plaintiff paid Rs.1,23, 98,146/- to defendant on 27th October 2020. Despite the agreement to ship a volume of 721 CBM, only 670 CBM was transported, and the increased volume was to be paid on a pro rata basis. Defendant stated that plaintiff did not pay for the excess volume. Thereafter, defendant entered into negotiations with various shippers to transport the cargo from Houston to Chile, but due to COVID-19 pandemic, causing shipping companies to suspend their services, negotiations could not materialize.

8. Defendants then entered into an agreement with Intermarine for the transport of the cargo from Houston to Chile. Intermarine issued an invoice on 7th November 2020, amounting to USD 136,059 including ocean freight, shifting, documentation and detention charges.

9. Another invoice of 17th December 2020 was issued by Intermarine for detention charges amounting to USD 63,454.84 due to congestion caused by swell.

10. Defendant stated that due to COVID-19 pandemic, market conditions were very low, which also affected the financial condition of defendant. Consequently, defendant could not pay the bills of Intermarine upfront and requested plaintiff to clear the invoice, on the assurance that plaintiff would pay repay the same. A guarantee of payment was, therefore, signed. Relevant portion of the said guarantee of payment is extracted as under:

11. On this basis, defendant paid Rs.1.07 crores to plaintiff in the following manner:

12. Defendant then states that plaintiff developed a dishonest intention to coerce the Managing Partners into providing money and filed a police complaint against Mr. Sudhir Binjola ('Mr. Binjola') and Mrs. Sugandha Thaliyal (husband and wife) before Police Station Kishangarh on 23rd January 2021. This was followed by a reimbursement invoice amounting to Rs. 2,89,73,311/- dated 28th January 2020, without providing any supporting documents.

13. When defendant insisted on providing bills for which plaintiff sought reimbursement, Mr. Lloyed Nicholas Pires informed Mr. Sudhir Binjola that a police complaint had been filed against him and his wife, and they were threatened that they would be jailed if they did not provide the money.

14. Mr. Binjola stated that they did not have sufficient funds, and Mr. Lloyed Nicholas Pires ('Mr Pires') offered an option to pay the amount in instalments and asked Mr. Binjola to sign an agreement unconditionally. Therefore, Memorandum of Understanding ('MOU') dated 2nd December 2021 came into picture, which the defendant states that Mr. Binjola was coerced into signing, along with providing six post- dated cheques.

15. Plaintiff encashed the first cheque dated 9th February 2021 of Rs.40 lacs. Defendant claims that with the intention of extorting further funds, Mr. Pires visited defendant's office on 16th February 2021 and informed Mr. Binjola that they had decided to revoke the MOU of 02nd February 2021, and that a new MOU was being prepared.

16. Mr. Pires returned the five post-dated cheques and instructed Mr. Binjola to destroy them, along with original copy of MOU in his presence. Plaintiff then forwarded an invoice for reimbursement dated 17th February 2021 amounting Rs.41,66,200/-. Defendant requested an explanation, which was not provided by the plaintiff, and an email dated 19th February 2021, was sent with draft agreement attached with an updated figure.

17. The draft agreement recorded that the total sum payable is Rs.2,89,73,79/- plus additional charges of Rs.41,66,200/-, totalling Rs.3,31,39,479/-.

18. Defendant claims that they did not accept the second agreement and sought for an explanation as to how the due amount had ballooned even after paying Rs. 1.7 crores.

19. During the investigation by the police, Mr. Binjola provided all the facts and also filed an anticipatory bail in which he was granted temporarily relief.

20. On 3rd March 2021, Mr. Pires withdrew the police complaint stating that they had entered into a settlement agreement for repayment of Rs. 2.5 crores.

21. Defendant claims that the last agreement shared on 19 th February 2021 was not accepted by them. Defendant further claims that threatening messages were sent to Mr. Binjola through WhatsApp stating that plaintiff would file a court case and initiate arbitration proceedings in the United Kingdom.

22. On the basis of these facts and circumstances, defendant stated that plaintiff has yet to furnish evidence of payments made on behalf of defendant, which they have failed to fulfil, and the demands have been inconsistent.

23. According to defendant, they do not owe the plaintiff anything more than Rs. 1.7 crores, which they have already paid.

Submissions on behalf of plaintiff

24. The plaintiffs stated that there was no dispute concerning the logistics contract agreed upon between the parties and that the invoice of Rs. 1,23,98,146/- raised by the defendant dated 11th September 2020 was duly paid.

25. On 27th October 2020, the corresponding payment to the carrier towards the freight of the cargo was never made. Plaintiff was informed by Intermarine that the original bills of lading were not being released by them for the cargo, as defendant did not make any payments to them for the freight of the cargo from Houston to Disport.

26. The plaintiff raised the issue on 16th December 2020, putting defendant on notice about additional expenses that could be incurred due to non-payment of freight and informing that all delays and additional costs for unloading, detention and port charges would be borne by the defendants.

27. Defendants acknowledged the issue and stated that they were facing a shortage of funds. However, it was clarified that since payment of funds had been made in advance, the question of shortage did not arise.

28. Intermarine, through email dated 18th December 2020, provided defendant with the demurrage invoice for a USD 50,000 in light of the delays caused by defendant at the Disport. The cargo, however, remained under detention due to non-remittance of funds.

29. In order to mitigate losses, plaintiffs issued a letter guarantee of payment to Intermarine dated 22nd December 2020 to cover any and all amounts including on freight, demurrage detention, storage, custom fines, and other charges. The cargo was finally discharged from the vessel on 24th December 2020.

30. As for plaintiff, a total of USD 186,059.83 was payable by the defendant to Intermarine as evidenced by invoices dated 7th November 2020 and 17th December 2020 raised by Intermarine.

31. Besides this, plaintiff also incurred debt, freight charges, road permit extension charges, insurance renewal and updates, storage charges and handling and wharfage.

32. A legal notice dated 4th January 2021 was addressed to defendant, demanding payment. A holding response was received, seeking time to resolve the matter amicably. Follow-ups were made on 5th January 2021 and 7th January 2021, and by an email dated 14th January 2021, plaintiffs were informed that defendant wished to resolve matters.

33. The plaintiffs remitted the amount of USD 186,059.83 to Intermarine on 18th January 2021.

34. On 28th January 2021, plaintiff raised invoice for Rs. 2,89,73,311.92/-, which included the amount remitted to Intermarine by the plaintiff on behalf of defendant and other charges incurred.

35. Defendant remitted a sum of only Rs. 40 lakhs as part payment and sought time for the payment of the balance Rs. 2.5 crores.

36. Accordingly, plaintiff and defendant entered into an MOU dated 2nd February 2021, for payment of Rs. 2.5 crores, wherein defendant acknowledged its liability to refund the same on a mutually agreed payment schedule with an outer limit of eight months. It was further agreed that defendant was liable to pay interest at rate of 24% per annum.

37. On the basis of this admission of liability, and with the time period having expired, only an amount of Rs. 67 lacs out of the total of Rs.2.5 crores were paid in scattered instalments. As a result, a sum of Rs. 1,83,00,000/- remains due and payable with the interest rate of 24% per annum. The outstanding dues amount to Rs. 4,42,02,479.611/-, with an additional legal cost claim of Rs. 28,60,693/-

38. Plaintiff stated that a further invoice dated 28 thFebruary 2021 was raised for an amount of Rs.19,85,000/- being paid by plaintiff sister concern in Houston due to late delivery of Cargo. On this basis, plaintiffs proposed a revision of the MOU, which defendant did not agree to, and leading to the exchange of legal notices.

39. It was further submitted by plaintiff that while leave to defend application states that an MOU was agreed upon but later resiled from, in paragraph 14 of this application, legal correspondence of 20th May 2021, 16th September 2021 stated that no such MOU existed.

40. Clearly defendant was playing fast and loose with the plaintiff in this regard and was attempting to create a case where none existed. The communications noted above, indicate that there was no mention of coercion; however, the same has been now raised in the leave to defend application.

41. Counsel for petitioner relies upon the decisions of the Division Bench of Calcutta High Court in Rameshwar Marwari v. Upendranath Das Sarkar 1925 SCC OnLine Cal 62, which was dealing with an appeal arising out of a suit instituted by plaintiff for recovery of a sum due under an instalment bond executed by defendant.

42. The suit had been dismissed by the Trial Court. Execution of the bond was not denied by defendant in the written statement. However, an objection was taken that the bond was not executed out of free will. The Court, while dealing with it, stated as under:

"Then as to the question whether the document was executed by the Defendant out of his own free will. In this connection reference must be made to the provisions of sec. 14 and also, upon the facts of the present case, to secs. 15 and 16 of the Indian Contract Act, because the consent in the present case is said to have been vitiated by coercion and undue influence. The learned Judge has found that the Defendant had been forced and coerced to execute the bond. He has come to this conclusion upon the evidence that was before him to the effect that the Defendant was threatened by the Plaintiff's brother that the criminal case which had already been instituted

against him would not be withdrawn. Now these facts, even if established, would not bring the case within sec. 15 of the Contract Act, which defines coercion. As regards undue influence the contract would be vitiated if it has been induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. The relation between a debtor and a creditor is not necessarily one in which the former is to be taken as being situated in such a position that his will is bound to be dominated by the latter. It is however urged that there are facts from which this domination of the will may be justly presumed....."

(emphasis added)

43. The other decision which was relied upon by plaintiff was of the Division Bench of this Court in Niaz Ahmed v. Indcap Enterprises^{2019 SCC OnLine Del 8931}. The said decision was in a Regular First Appeal for setting aside a decree passed in a suit filed by respondent under the provisions of Order XXXVII of the CPC. Appellant stated that the agreement signed by them was under coercion, pressure, undue influence, force and threat of filing criminal proceedings.

44. The application by appellant seeking leave to defend had been dismissed, and appellant was claiming an unconditional leave to defend. The Court noted that the agreement was duly signed and signatures were not denied, nor was the execution of the documents. The Court then went on to hold as under:

"18. To say that the agreement dated 23.08.2012 has been signed under coercion, pressure and threat, in our view, is a completely sham and moonshine defence as it cannot be expected that a person would be threatened for a long period from 29.10.2007 to the signing of the last agreement on 23.08.2012. Nowhere between this span of so many years has the appellant ever approached any court of law or ever filed a police complaint. Neither it is the case of the appellant that the case was not registered on his making efforts to do so nor it is the case of the appellant that he was prevented in any manner from taking recourse to the provisions of Section 156(3) Cr. P.C."

(emphasis added)

45. Essentially, what the plaintiff was submitting by relying upon these two decisions was that elements of coercion and undue influence cannot be made out if the time expanse in the execution of an agreement is long, and that the issue of undue influence would arise if the relationship subsisting between the parties is such that one of the parties is in a position to dominate the will of the other.

46. The Calcutta High Court in Rameshwar Marwari v. Upendranath Das Sarkar (supra), noted that the relationship between a debtor and a creditor is not necessarily one in which the former is to be in a situation whereas will can be dominated by the latter.

47. In reply to the leave to defend, plaintiff therefore essentially submitted as under:

i. Defendant admitted that it had entered into the logistics contract with plaintiff for shipping cargo.

ii. Defendant admitted that it had received payment of Rs.

1,23,98,146/-.

iii. Defendant admitted that it was required to ensure that the cargo was shipped to its final destination.

iv. Defendant admitted that it had entered into an agreement with Intermarine for transportation of cargo from Houston to Chile. v. Defendant admitted that invoices were raised on the defendant. vi. Defendant admitted that it was unable to pay the bills of Intermarine and agreed to repay the plaintiff and requested plaintiff to clear them.

vii. Plaintiff paid a total amount of Rs.2,89,73,311/- for transportation of cargo. Aside from the original amount of Rs.1,23,98,146/-, an additional amount of Rs.1,36, 75, 397/- was paid to Intermarine. viii. Plaintiff claims that it had incurred further charges for completing transport of the cargo such as debt freight charges, road permit extension charges, insurance renewal and update storage charges and handling and wharfage charges.

ix. Defendant had made part payment of Rs. 40 lakhs towards amounts due under the invoice of 28th January 2021. x. Defendant executed the MOU dated 2nd February 2021 for the pre-

existing admitted liability.

xi. No contemporaneous correspondence has been produced by the defendant alleging that he was coerced to execute the MOU. Instead of handing over the cheques, the payments were made through wire transfer and the cheques continued to be with defendant.

xii. Defendant concocted the story about coercion and threat only at the stage of the leave to defend application. xiii. Defendant by its own admission paid Rs. 40 lakhs in the month of February 2021, after the alleged revocation of the MOU on 16th February 2021 and thereafter, an additional amount of Rs. 15 lakhs were also paid.

Analysis

48. The applicable principle, is that grant of leave to defend is the ordinary rule and denial of leave to defend is an exception. Generally, the prayer for leave to defend is to be denied in cases where defendant practically has no defence and is unable to give out even a semblance of triable issues before the court.

49. In this regard, the Court's observations in *B.L. Kashyap & Sons Ltd. v JMS Steels & Power Corporation & Anr.* (2022) 3 SCC 294 are extracted as under:

"33. It is at once clear that even though in *IDBI Trusteeship Services Ltd. v. Hubtown Ltd.*, (2017) 1 SCC 568 : (2017) 1 SCC (Civ) 386], this Court has observed that the principles stated in para 8 of *Mechelec Engineers case* [*Mechelec Engineers & Manufacturers v. Basic Equipment Corpn.*, (1976) 4 SCC 687] shall stand superseded in the wake of amendment of Rule 3 of Order 37 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.

33.1. 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 bona fide 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 appears 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. 33.2. 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.

33.3. 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."

(emphasis added)

50. The principles laid down in IDBI Trusteeship Services Ltd. v Hubtown Ltd. (2017) 1 SCC 568, which provides the most prominent articulation, are extracted as under:

"17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698: (1966) 68 Bom LR 36], 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."

(emphasis added)

51. On the basis of established principles for assessing leave to defend applications, the Court has to assess whether the defence raised is substantial, likely to succeed, raises a triable issue, is it a fair or reasonable defence, not a positively good defence, genuineness of the triable issue, plausibility, or improbability etc.

52. All these expressions basically invite an objective analysis on a sliding scale permitting the Court to either reject the leave to defend, or allow a conditional leave to defend, or otherwise permit an unconditional leave to defend.

53. The centre of gravity for this assessment is the Agreement/MOU dated 2nd February 2021, where defendant acknowledged its liability for payment of Rs. 2.5 crores and an agreed payment schedule, failure to comply would trigger an interest at the rate of 24% per annum.

54. Defendant does not deny executing this agreement; however, states in leave to defend application that it was entered under coercion and undue influence, principally under the threat of criminal proceedings against the defendant.

55. At the very outset, this Court is not inclined to accept this assertion for the simple reason that while the agreement was executed in 2021, the leave to defend application has only been filed in 02nd April 2024, with no communication in the interregnum that defendant wished to discount or denude the 2021 agreement, on the basis of undue influence and coercion. Not only this, but also an amount of Rs. 67 lacs were paid in scattered instalments pursuant to the agreement.

56. The other principal objection of defendant is that the MOU was rescinded by plaintiffs themselves, and a sequence of events has been narrated relating to the interaction of Mr. Pires with Mr. Binjola's. (extracted in paragraph 13 to 16 above)

57. This also, to the Court, seems like a sham and moonshine defence since there is no communication from the defendant side recording the same or even confirming that they had already paid Rs. 1.7 crores and nothing else was due, as they seek to state at this stage in the leave to defend application. Besides, after the alleged revocation on 16th February 2021 in Mr. Binjola's office, amounts of Rs. 40 Lacs and Rs.15 Lacs were paid, as per defendant, thereby completely eroding their story of a revocation of MOU.

58. Moreover, the basis of whole transaction is also admitted in that the defendant had requested plaintiff to pay Intermarine since defendant was unable to pay the same, therefore a letter of guarantee was given, and then payment was made to Intermarine of USD 186,059.83. The invoice of Rs. 2,89,73,311/- was raised on 28th January 2021 on this basis itself.

59. In view of above, it is evident that defendant's plea of coercion and undue influence lacks credibility, both in terms of timing and conduct post execution of the MOU dated 02nd February 2021. The consistent and voluntary part-payments made even after the alleged revocation belie any assertion of coercion.

60. Never was this issue of coercion, undue influence raised through any forum or communication. Being established commercial entities, there was no scope of plaintiff to dominate the will of the defendant. There was no skew of power, influence or heft which would completely prevent defendant from raising the issue of coercion and undue influence, either by filing a criminal complaint or by seeking cancellation of the MOU in a civil proceeding.

61. Defendant has failed to establish the existence of a substantial defence or even raise bona fide triable issues. Instead, the defence appears to be an afterthought and lacks the substance or genuineness required to merit leave to defend. As reiterated by the Supreme Court in *B.L. Kashyap & Sons Ltd. v JMS Steels & Power Corporation & Anr* (supra) and *IDBI Trusteeship Services Ltd. v Hubtown Ltd.* (supra), denial of leave is warranted only in cases where the defence is frivolous or vexatious, which is clearly the case here.

62. Accordingly, the application is dismissed.

CS(COMM) 677/2023

1. List on 13th May 2025, before the Joint Registrar (Judicial) for further proceedings.
2. Judgement be uploaded on the website of this Court.

(ANISH DAYAL) JUDGE APRIL 09, 2025 /RK/tk