

**‘HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

CIVIL REVISION PETITION NO.1680 OF 2023

Between:

Neha International Ltd. At 6-3-1090/A/12 & 13,
No.501, Manbhum Jade Towers, Rajbhavan Road,
Somajiguda, Hyderabad,
Rep. by its Managing Director/Authorized signatory,
Mr. Gaddam Vinod Reddy,
S/o. Sri. G. Ram Reddy.

.....Petitioner/Petitioner/Defendant

AND

DBS Bank Ltd., at 12, Marina Boulevard,
Level 44, DBS Asia Central @ Marina Bay,
Financial Centre, Tower-3, Singapore-01892,
Rep. by its authorized signatory,
Mr. Somit Bhandari office address at 19th floor,
Express Towers, Behind Nariman Point,
Mumbai-400021, Maharashtra, India.

.....Respondent/Respondent/Plaintiff

DATE OF JUDGMENT PRONOUNCED: 21.06.2023
Submitted for approval.

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

&

THE HONOURABLE SRI JUSTICE NAGESH BHEEMAPAKA

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|---|---|--------|
| 1 | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish
to see the fair copy of the Judgment? | Yes/No |

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&
*** THE HONOURABLE SRI JUSTICE NAGESH BHEEMAPAKA**

+ CIVIL REVISION PETITION NO.1680 OF 2023

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.....Respondent/Respondent/Plaintiff

! Counsel for the Petitioner: Sri B. Ram Moham Reddy

^ Counsel for the Respondent: Ms. Poornima Singh Kambli,

>HEAD NOTE:

? Cases referred

¹ 2019 7 SCC 577

² (2017) 1 SCC 568

**THE HON'BLE SRI JUSTICE P.NAVEEN RAO
&
THE HONOURABLE SRI JUSTICE NAGESH BHEEMAPAKA**

C.R.P.NO.1680 OF 2023

ORAL ORDER:

Heard Sri B. Ram Mohan Reddy, learned Senior Counsel for the petitioner and Ms. Poornima Singh Kambli, learned counsel for the respondent.

2. Respondent Bank filed summary suit i.e., O.S.No.34 of 2020 under Order XXXVII of the Code of Civil Procedure, 1908, in the Court of the Hon'ble Chief Judge, City Civil Court, Hyderabad praying to grant judgment and decree against defendant for a sum of USD 1,206,174.46 (US Dollars One Million Two Hundred and Six Thousand One Hundred and Seventy Four Dollars Forty Six Cents Only). After service of summons, the petitioner herein filed I.A.No.363 of 2022 in COS.No.34 of 2020 under Order XXXVII Rule 5 R/w. Section 151 of CPC, praying to grant unconditional leave to defend the suit. The trial Court elaborately considered respective submissions and by order dated 20.03.2023 granted leave to the petitioner to defend the suit subject to furnishing the security equivalent to the suit amount i.e., Rs.8,56,50,448.60 paise within 60 days from the date of the order. Aggrieved thereby, this Civil Revision Petition is filed.

3. Learned Senior Counsel for the petitioner contended that the trial Court having observed that the petitioner has made out triable issues, ought to have granted unconditional leave to defend and grossly erred in imposing condition of furnishing security equivalent to the suit amount to defend as a condition precedent admission to defend the summary suit. In support of his contention that the trial Court grossly erred in directing the petitioner to furnish the security equivalent to the suit amount, learned counsel placed reliance on the decisions of the Hon'ble Supreme Court in ***Sudin Dilip Talaulikar Vs. Polycap wires Pvt. Ltd***¹ and ***IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd***².

4. Per contra, according to learned counsel for the respondent, the trial Court has rightly exercised the discretion in insisting the petitioner to furnish security for the entire amount admitted by the petitioner and since petitioner has already admitted liability, he is bound to furnish the security. Learned counsel submits that having regard to the facts of the case, the trial Court has rightly directed the petitioner to furnish the security for the full amount claimed by the plaintiff. This

¹ (2019) 7 SCC 577

² (2017) 1 SCC 568

Court cannot interfere with the said discretion exercised by the trial Court.

5. Having regard to the controversy involved, we are not recording in detail the facts in issue. As the revision petition before us is against the interlocutory order and the main suit is pending consideration of the Commercial Court, the only issue for consideration is whether the trial Court erred in directing the petitioner to furnish security for the entire suit amount claimed by the plaintiff.

6. To grant leave to defend, the Court has to satisfy that there are triable issues. Having regard to this requirement, the Commercial Court noticed the contentions urged on behalf of the petitioner to grant leave. The Commercial Court noted that petitioner was seeking liquidity damages, raised plea of jurisdiction, raised objection regarding verification of the plaintiff and also raised objection regarding various amendment orders. The trial Court noted that these are all triable issues and therefore leave can be accorded to the defendant to defend the suit. The trial Court further noticed that defendant has raised several issues which require roving inquiry which is not possible without trial of the suit. Therefore, the trial Court

granted leave to the defendant, to defend the suit on the condition of furnishing security equivalent to the suit amount.

7. The issue of granting leave to defend in a summary suit and whether leave can be granted unconditionally or conditions should be imposed was considered by the Hon'ble Supreme Court elaborately in **IDBI** case. In paragraph No.15 of the said Judgment, the Hon'ble Supreme Court laid down principles that should be observed while granting unconditional leave to defend the summary suit. The paragraph No.15 reads as under:

"15. However, there are two judgments of this Court which directly deal with the amendment made to Order XXXVII and the effect thereof on the ratio contained in Mechelec's case. In defiance Knitting Industries (P) Ltd. v. Jay Arts, (2006) 8 SCC 25, this Court, after setting out the amended Order XXXVII and after referring to Meechelec's case, laid down the following principles – "While giving leave to defend the suit the court shall observe the following principles:

(a) If the court is of the opinion that the case raises a triable issue then leave to defend should ordinarily be granted unconditionally. See Milkhiram (India) (P) Ltd. v. Chamanlal Bros. [AIR 1965 SC 1698 : 68 Bom LR 36]. The question whether the defence raises a triable issue or not has to be ascertained by the court from the pleadings before it and the affidavits of parties.

(b) If the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious it may refuse leave to defend altogether. Kiranmoyee Dassi v. Dr. J. Chatterjee [AIR 1949 Cal 479 : 49 CWN 246] (noted and approved in Mechelec case [(1976) 4 SCC 687 : AIR 1977 SC 577].

(c) In cases where the court entertains a genuine doubt on the question as to whether the defence is genuine or sham or whether it raises a triable issue or

not, the court may impose conditions in granting leave to defend”.

8. In paragraph No.17 of the said judgment, the Hon’ble Supreme Court observed that as per the provision as existing now in Order XXXVII, the trial Judge is vested with discretion which has to be exercised to result in justice being done in the facts of each case. It went on to observe as under:

“17. But Justice, like Equality, another cardinal constitutional value, on the one hand, and arbitrariness on the other, are sworn enemies. The discretion that a Judge exercises under Order XXXVII to refuse leave to defend or to grant conditional or unconditional leave to defend is a discretion akin to Joseph’s multi-coloured coat-a large number of baffling alternatives present themselves. The life of the law not being logic but the experience of the trial Judge, is what comes to the rescue in these cases; but at the same time informed by guidelines or principles that we propose to lay down to obviate exercise of judicial discretion in an arbitrary manner. At one end of the spectrum is unconditional leave to defend, granted in all cases which present a substantial defence. At the other end of the spectrum are frivolous or vexatious defences, leading to refusal of leave to defend. In between these two extremes are various kinds of defences raised which yield conditional leave to defend in most cases. It is these defences that have to be guided by broad principles which are ultimately applied by the trial Judge so that justice is done on the facts of each given case”.

8.1. In substance, the Hon’ble Supreme Court held that between two extremes i.e., to grant leave unconditionally or to grant leave conditionally, various kinds of defences raised which yield conditional leave to defend in most cases. The Court is required to notice that the assessment of defences have to be guided by broad principles which are to be ultimately applied by

the trial Judge so that justice is done on the facts of each given case.

8.2. In paragraph No.18 the said judgment, the Hon'ble Supreme Court also held as under :

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

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;

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;”

8.3. The Hon'ble Supreme Court further observed that even if the defendant raises triable issues, if the trial Judge entertains a doubt about the defendant's good faith, or the genuineness of the triable issues, the trial Judge should impose conditions both as to time or mode of trial, as well as payment into Court or furnishing security. The Court must take care to see that the

object of the provisions to assist expeditious disposal of commercial causes is not defeated and the Court must also take care to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

9. In other words, the Hon'ble Supreme Court cautioned in imposing severe conditions even when conditions are required to be imposed to grant leave to defend and that the main purpose of imposing conditions is to ensure expeditious disposal of commercial dispute of summary nature.

10. In paragraph No.11 of **Sudin Dilip's** case, the Hon'ble Supreme Court held as under:

"11. In a summary suit, if the defendant discloses such facts of a prima facie fair and reasonable defence, the court may grant unconditional leave to defend. This naturally concerns the subjective satisfaction of the court on basis of the materials that may be placed before it. However, in an appropriate case, if the Court is satisfied of a plausible or probable defence and which defence is not considered a sham or moonshine, but yet leaving certain doubts in the mind of the court, it may grant conditional leave to defend. In contradistinction to the earlier subjective satisfaction of the court, in the latter case there is an element of discretion vested in the court. Such discretion is not absolute but has to be judiciously exercised tempered with what is just and proper in the facts of a particular case. The ultimate object of a summary suit is expeditious disposal of a commercial dispute. The discretion vested in the court therefore requires it to maintain the delicate balance between the respective rights and contentions by not passing an order which may ultimately end up impeding the speedy resolution of the dispute".

11. The Hon'ble Supreme Court held that there is an element of discretion vested in the court. Such discretion is not absolute but has to be judiciously exercised tempered with what is just and proper in the facts of a particular case. The Hon'ble Supreme Court again highlighted that the object of a summary suit is expeditious disposal of a commercial dispute. The discretion vested in the court therefore requires it to maintain the delicate balance between the respective rights and contentions by not passing an order which may ultimately end up impeding the speedy resolution of the dispute.

12. Learned Senior Counsel for the petitioner therefore contended that even assuming that the trial Court was right in imposing the condition to deposit the entire suit amount, it is on the very high side and would certainly cause lot of hardship to the petitioner and would defeat the very objective of imposing such conditions.

13. Having heard both sides and having regard to the peculiar facts of this case, this Court is of the opinion that the trial Court was not right in directing to furnish security for the entire suit amount. Therefore, we modify the order of the trial Court only to an extent of furnishing security and direct the petitioner to furnish security equivalent to an extent of 50% of the suit

amount, within six (6) weeks from the date of receipt of a copy of this order.

14. In view thereof, this Civil Revision Petition is disposed of. Miscellaneous petitions, pending if any, shall stand closed.

P.NAVEEN RAO, J

NAGESH BHEEMAPAKA, J

Date: 21.06.2023

Note: Issue C.C. within 10 days.

Note: LR Copy to be marked.

(B/o.)

Pvt

**THE HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
THE HONOURABLE SRI JUSTICE NAGESH BHEEMAPAKA**

C.R.P.NO.1680 OF 2023

Date: 21.06.2023

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