



2025:DHC:1649



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

% **Reserved on: 24<sup>th</sup> January, 2025**

**Pronounced on: 12<sup>th</sup> March, 2025**

+ **CS(COMM) 560/2023&I.A. No. 31874/2024**

M/S PC JAIN TEXTILE PVT LTD THROUGH ITS  
AUTHORISED REPRESENTATIVE .....Plaintiff

Through: Mr. Harender Kr Sangwan & Mr.  
Vidit Garg, Advocates

versus

SH. SHYAM SUNDER SURI AND ANR .....Defendants

Through: Mr. Prateek Jain and Mr. Vardaan  
Mishra, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE ANISH DAYAL**

### **JUDGMENT**

**ANISH DAYAL, J.**

**I.A. No. 31874/2024 (under Order XXXVII R 3(5) of CPC seeking leave to defend)**

1. This application has been filed under Order XXXVII Rule 3 (5) of the Civil Code of Procedure, 1908 ('CPC') seeking leave to defend on behalf of defendants.

2. The suit was filed under Order XXXVII of CPC by plaintiff seeking rendition of accounts with respect to contractual amounts due under lease deed dated 6<sup>th</sup> April 2016, recovery of money due and interest payable.



3. The defendants were served summons for judgment on 11<sup>th</sup> May 2024 at their residence and the present application seeking leave to defend is filed within the statutory period of 10 days.

4. Plaintiff claims to be the owner of built-up property bearing number 26/1, 26/17 and 26/18, Najafgarh Road, Shivaji Marg, Moti Nagar, New Delhi-110015 (*'suit property'*), consisting of basement with total carpet area of 2,500 square feet approximately, ground floor and first floor with total carpet area of 15,000 square feet; and second floor.

5. In February 2016, defendant Nos.1 & 2 approached plaintiff for taking the basement, ground floor and first floor on rent for commercial purposes of running a banquet hall or restaurant. Defendants were engaged in the business of hospitality and were running the business under name and style of *M/s Krishna Hospitality*.

6. A lease deed dated 6<sup>th</sup> April 2016 was executed between the parties *qua* ground floor and first floor of the said property; was duly registered in the office of Sub Registrar II, Basai Darapur, New Delhi (*'lease deed-I'*). This was for a period of 8 years w.e.f. 01<sup>st</sup> May 2016 till 01<sup>st</sup> May 2024, with a lock in period of 5 years, monthly rent of Rs. 5 lacs, inclusive of tax rent to be paid on 10<sup>th</sup> of each calendar month and 15% escalation after the expiry of first 3 years and thereafter, every two years.

7. Another lease deed dated 6<sup>th</sup> April 2016 was executed between the parties, leasing out the basement of the property (*'lease deed-II'*). This lease deed was not registered and the registration was delayed on one pretext or the other. *Lease deed-II* stipulated a lock in period of 5 years, monthly rent of Rs. 2 lacs per month inclusive of tax, rent to be paid on



10<sup>th</sup> of each calendar month, monthly rent with 15% escalation after the expiry of first three years and then then after every two years.

**8.** After carrying out the fit-out work, defendants commenced a banquet hall in the name ‘*Coral Bells*’ conjointly on the basement, ground floor and first floor. Plaintiff claims that after the tenancy, defendants started committing default in making payment of monthly rent on time and that some of the cheques issued by defendants towards payment of monthly rent, got dishonoured upon presentation.

**9.** As per *clause 2 of lease deed-I*, plaintiff was entitled to recover an amount of Rs. 1,000/- as cheque bouncing charges and subsequent delay charges of Rs. 2,000/- per day, till the amounts were paid up.

**10.** As per *clause 2 of lease deed-II*, plaintiff was entitled to recover an amount of Rs.1,000/- as cheque bouncing charges and subsequent delay charges at Rs. 5,000/- per day, till the deficiency was made up.

**11.** As per *clause 8(k)* of both the lease deeds, default in payment of rent for more than two consecutive months, would trigger termination.

**12.** Plaintiff issued legal notice dated 25<sup>th</sup> April 2018 terminating the lease deeds, calling upon defendants to vacate the property and pay the rent and other charges. A reply was sent by defendants, however, they refused to comply. Plaintiff claims that defendants continued to remain in illegal possession and thereafter, plaintiff sold off the premises on 9<sup>th</sup> August 2021.

**13.** It is also noted that defendants have handed over possession in 2021 itself. The claim, therefore, is for rental dues, *mesne* profits, liquidated damages and calculated damages for the period up till 2021, when plaintiff gave up the ownership.



**Submissions by counsel for parties**

**14.** The defendants alleged that the plaint is not maintainable on the following grounds:

**14.1** The lease deed was of 2016 and was allegedly terminated in 2018. The suit was filed in 2023, which is barred under limitation. Defendants submit that the cause of action, even as per plaint, first arose on 6<sup>th</sup> April 2016 when the parties entered into a lease and on all the dates subsequently, when defendants failed to make the payment of rent.

**14.2** Legal notice was issued on 25<sup>th</sup> April 2018, when the cause of action again arose. Plaintiff, however, claims that a suit was filed in 2019 for recovery of arrears of rent, which was withdrawn with liberty to claim the entire contractual dues. The said withdrawal was before the District Judge (Commercial), West, Tis Hazari Courts and was recorded by order dated 23<sup>rd</sup> October 2021. From 2019 onwards, there were some part payments and till the defendants continued to be in possession i.e. 2021, the cause of action would still arise. After the withdrawal of the suit on 23<sup>rd</sup> October 2021, mediation proceedings continued between the parties under *Section 12A of the Commercial Courts Act 2015* from 7<sup>th</sup> February 2022 to 25<sup>th</sup> January 2023. Present suit, was filed on 5<sup>th</sup> July 2023, after removing objections.

**14.3** Defendants further claim, that the claim in the suit by plaintiff is about Rs. 8.75 crores and only Rs. 1,200/- towards court fee have been paid. Reference is made to '*prayer b*' of the suit which seeks a money decree for contractual amount due and payable as per the lease deeds, in favour of plaintiff. However, plaintiff, has chosen not to determine the said amount, though has done valuation of the suit at Rs. 8.7 crores in



*para 28* of the plaint. Even, as per the plaint, this amount was a determined amount, based on the contract and, therefore, plaintiff was obliged to pay the requisite court fees on the full and correct valuation.

**14.4** Defendants submitted that *lease deed-II*, relating to the basement, was unregistered and while raising an objection under *Section 17* of the *Registration Act, 1908* (**‘Registration Act’**), which mandates that leases of immovable property for any term exceeding one year, have to be registered compulsorily.

**15.** Plaintiff refutes the same, submitting that they are seeking recovery of arrears of rent and damages for breach of terms and conditions of the lease agreement and not exerting any rights over immovable property. Reliance is placed on *proviso* to *Section 49* of the *Registration Act*, providing that an unregistered document affecting a movable property may be received as evidence of a contract in a suit for specific performance under the *Specific Relief Act, 1963* or as evidence of any collateral transaction not required to be affected by the registered instrument. In any event, defendants’ claim would require substantial evidence to be led, in order to defeat the claim of plaintiff.

**16.** Defendants’ counsel adverted to termination notice dated 25<sup>th</sup> April 2018, which in *clause 3* stated that, the tenancy was for a period of 8 years and as per *clause 5*, sought to terminate the tenancy. In the reply to the said legal notice, it was clearly stated that there was a lock in period of 5 years w.e.f. 01<sup>st</sup> May 2016 till 30<sup>th</sup> April 2021. The question of terminating tenancy, when there was no violation of terms and conditions of the agreement, did not arise.

**17.** Plaintiff in its reply to the present application, has admitted the



exact reiteration of clauses of lease deeds entered between the parties, by defendants in its application, thereby agreeing to the lock in period of 5 years, as well.

**18.** Defendants claimed that the notice which was sent by plaintiff, did not state as to which of the grounds in *clause 8(k)* of the lease deed were not complied with and notice was, therefore, defective for being vague and non-specific. He also submitted that as per *clause 8(k)* of the said agreement, plaintiff was required to send a written intimation of 15 days, thereby giving defendants a time period of 15 days to cure such breach. However, plaintiffs straight away sent a termination notice upon defendants.

**19.** To this, plaintiff has stated that several reminders were sent by plaintiff to defendants on WhatsApp, before legal notice was issued terminating the lease deed. Plaintiff has also filed the WhatsApp chats along with additional documents, requesting defendants to clear five months of pending dues.

**20.** As per defendants, just before termination, notice had been sent, the bank account which has been produced by defendants, shows that there have been payments of Rs. 3,00,000/- and Rs. 2,40,000/- on 16<sup>th</sup> April 2018 and 19<sup>th</sup> April 2018, respectively. The question of non-compliance therefore, did not arise. The bank statement was in fact, appended to an email dated 4<sup>th</sup> May 2019 by the accountant of plaintiff to the CA of the defendants.

**21.** To this, plaintiff stated that both the lease deeds have been admitted, as well as the amounts due. The question of part payment prior to the legal notice being sent would not be relevant, as far as the



application for leave to defend is concerned.

22. Defendant stated that the earlier suit was filed for precisely the same reliefs but was withdrawn. The lease was based on an unregistered deed and, therefore, the issue of termination would not arise.

23. Lease deed stated that in the event of sale or transfer or disposal, it will be subject to the rights of the lessee under lease deed; the lessee will have no right to object in any manner with such sale and or transfer.

24. The defendant has relied upon the decisions in ***B.L. Kashyap & Sons Ltd. v JMS Steels & Power Corporation & Anr.*** (2022) 3 SCC 294 and ***K.B. Saha & Sons (P) Ltd. v Development Consultant Ltd.*** (2008) 8 SCC 564.

25. ***B.L. Kashyap*** (*supra*) reiterates the principles, that grant of leave to defend is the ordinary rule and denial of leave to defend is an exception. Generally, the prayer for leave defend is to be denied in cases where the defendant practically has no defence and is unable to give out even a semblance of triable issues before the court. In this regard, the Court's observations are extracted as under:

“33. It is at once clear that even though in IDBI Trusteeship [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)

26. The Court in ***B.L. Kashyap*** (*supra*) relied upon the principles laid down in ***IDBI Trusteeship Services Ltd. v Hubtown Ltd.*** (2017) 1 SCC 568, in which it was stated 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)

27. In *K.B. Saha* (*supra*), it was held by the Supreme Court that documents required to be registered if unregistered, are not admissible in evidence and can, however, be used for collateral purpose. The collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration and if a document is inadmissible in evidence, none of its terms can be admitted in evidence. The observations of the Court *in extenso* are as under: -

33. In *Rana Vidya Bhushan Singh v. Ratiram* [(1969) 1 UJ 86 (SC)] the following has been laid down:

“A document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immovable property, but it may be admitted as evidence of collateral facts, or for any collateral purpose, that is for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. As stated by Mulla in his Indian Registration Act, 7th Edn., at p. 189:

*‘The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court of Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under Section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the*



*character of the possession of the person who holds under it.’ ”*

**34.** *From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:*

- 1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.*
- 2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.*
- 3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.*
- 4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.*
- 5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.”*

(emphasis added)

### **Analysis**

**28.** By the said summary suit, plaintiff seeks rendition of accounts with respect to the contractual amount due as per lease deed dated 6<sup>th</sup> April 2016 (*ground floor and first floor of the property*) and lease deed dated 6<sup>th</sup> April 2016 (*basement of the said property*) and a money decree for the said amount due and payable along with *pendente lite* and future interest @18% from the date of the termination of lease till the date of realization.



29. The defendants have asserted its leave to defend application, to which a response had been filed by plaintiff. Pursuant to perusal of the documents, pleadings and assessment of the submissions by the respective counsels, in the opinion of the Court, the following aspects can be ascertained:

- i. Defendants do not deny the execution of *lease deed-I* and *lease deed-II*. The principal objection taken in the leave to defend is that *lease deed-II*, related to the basement, is an unregistered document and, therefore, cannot be relied upon.
- ii. A bald averment is made in *para 9* of the leave to defend application that these are false, fabricated and forged documents. However, this is not substantiated in any form whatsoever, even in the pleadings and the consistent stand of the defendants is that *lease deed-II* cannot be placed in evidence, in view of *Section 49 of the Registration Act*, since it requires compulsory registration under *Section 17(1)(d) of the Registration Act*.
- iii. Quite to the contrary, defendants state in their application that they have “*made all the payments approved in the said tenancy*” (*para 12 of the said application*). Defendants admit receiving plaintiff’s legal notice dated 25<sup>th</sup> April 2018 (*para 22 of the leave to defend application*) whereby plaintiff terminated defendants’ tenancy. Plaintiff’s contention that they sent several reminders to defendants on WhatsApp before they issued the legal notice to defendants, is also shown by the WhatsApp chats requesting defendants to clear 5 months pending dues, filed with additional documents. This Court, therefore, finds that the plea that *lease*



*deed-II* cannot be relied upon, is a defence which is not made in good faith and is not genuine. There is nothing stated in the leave to defend application to the effect that the basement portion was never used by defendants.

- iv. In any event, as per law articulated in ***K.B. Saha*** (*supra*), (*relevant paragraphs extracted in para 26 above*), an unregistered document can be used as evidence for a collateral purpose. The collateral purpose must be a transaction, not itself required to be affected by a registered document.
- v. As regards *lease deed-I*, there is a clear admission by defendant with respect to its execution. Leave to defend application also *inter alia* in *paras 14 and 16* admits that they paid the security deposit of Rs. 50 lacs for this purpose and showed statements of accounts to the Court, showing that they have recently paid Rs. 3,00,000/- lacs and Rs. 2,40,000/- on 16<sup>th</sup> April 2018 and 19<sup>th</sup> April 2018, respectively. This bank statement was appended to an email dated 4<sup>th</sup> May 2019 by accountant of plaintiff to the CEO of defendants, which defendants relied upon.
- vi. Having admitted the execution of *least deed-I*, defendants cannot be permitted to vary from the contents of a written document in terms of the principles laid down in *Sections 91 and 92 of the Evidence Act, 1872*.
- vii. It was also not denied that defendants had vacated the said property in August 2021 when plaintiff had sold off their premises to a third party. Defendants have not presented anything except for bald denials to state that they were not in possession of the



property as per lease deed.

- viii. At the very least, ignoring *lease deed-II* for the moment, they would be considered in possession from 06<sup>th</sup> April 2016 till vacating the said property in 2021.
- ix. The monthly rent payable was Rs. 2 lacs per month with an increase by 50% as per the intervals in *clause 1.1*. The lock in period was five years. There were additional charges to be paid in case of dishonour of cheques presented (Rs. 1,000/-) and charges for subsequent delay in paying the rent (Rs. 5,000/- per day).
- x. Even, assuming that defendants raise an issue relating to the imposition of the charges which require to be tried, the liability to pay the admitted rent cannot be denied, at least for the period when they were in possession.
- xi. As per calculation sheet provided by plaintiff, appended to the plaint, the outstanding rent for the time period when they were in possession was Rs. 62,24,550/- on which GST of 18% would be levied. Though, an additional claim has been made for cheque bouncing charges (Rs. 17,000/-), charges for delayed rent (Rs. 1,66,18,000/-) and damages (Rs. 58,50,000/-) which may be potentially subject to trial after consideration of the respective accounts, the outstanding rent at the very least has to be taken into consideration for purposes of considering the application for leave to defend.
30. In this regard, the principles laid down in *IDBI Trusteeship (supra)* are extremely relevant and apposite. The same principles have been reiterated by the Supreme Court more recently in 2022 in *B.L.*



*Kashyap* (*supra*) [relevant paragraphs of *IDBI Trusteeship* (*supra*) extracted in *para 25* and of *B.L. Kashyap* (*supra*) in *para 24* above].

**31.** In the opinion of this Court, defendants have not placed anything on record to state that they have actually paid post 2021, any amount of this outstanding rent, nor any calculation sheet has been provided nor any substantiation with the application. Only bald averments are made in the application itself, which to this Court do not seem genuine, and in good faith.

**32.** Therefore, in the opinion of this Court, relying upon *paras 17.3* and *17.4* of the *IDBI Trusteeship* (*supra*) (extracted in *para 25* above), this Court is inclined to impose a condition on the defendants, for deposit of the said outstanding rent claimed by plaintiff in the Court, for allowing the application for leave to defend.

**33.** As regards the cheque bouncing charges, delayed rent and damages, the Court is inclined, at this stage, to provide benefit of doubt to the defendants in order to allow them to raise their defence, relating to the imposition of the same. To this extent, the security/deposit by the Court has not been imposed.

**34.** Imposition of the security/deposit in respect of arrears of rent is also a broad estimate, considering that there are interest charges also applicable on the same, since the payments were delayed as per the plaintiffs.

**35.** Therefore, taking the outstanding arrears amount as *Rs. 62,24,550/-* alongwith *18% GST* calculated at *Rs. 11,20,419/-*, the Court is inclined to allow the leave to defend conditional upon the defendants depositing an amount of *Rs. 73,44,969/-* within a period of four weeks.



**36.** It is quite clear and categorical that defendants do not have a defence relating to the arrears of rent. The defence raised is improbable, and further, the element of plausibility is very slim if not negligible. It is in this assessment, that the Court is imposing a pre-deposit/furnishing of security.

**37.** As regards the issue of limitation is concerned, the fact that the previous suit which had been filed by plaintiff was subsequently withdrawn, after the defendants vacated suit premises in August 2021, followed by mediation proceedings between the parties in 2022 and 2023, the Court finds that the application of *Section 14 of the Limitation Act, 1963* is *prima facie* tenable and defendants' plea that the suit was barred by limitation, is a triable issue at best, mixed question of fact and law. Considering that the leave to defend application is being permitted, the Court would not like to express a view on this issue, at this stage.

**38.** The issue of suppression of the previous suit is not relevant considering the plaint itself categorically discloses in *para 17* about the previous suit. The argument relating to suppression, by defendants is completely unmerited.

**39.** The other aspects which have been asserted in the application for leave to defend *inter alia* there are payments of Rs. 40 lacs by the new purchaser, the issue of conversion charges and refund of security, which defendants choose to raise in the written statement, maybe considered as triable, after an assessment, at the stage of framing of issues.

### **Conclusion**

**40.** The Court in allowing the leave to defend application has not only considered the principles in *IDBI Trusteeship (supra)* but also the



2025:DHC:1649



principles enunciated in *B.L. Kashyap (supra)* where the Court has stated “*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*”.

**41.** Therefore, the leave to defend application is allowed subject to defendants depositing an amount of **Rs.73,44,969/-** to the Registrar General of this Court, *within a period of four weeks*, which shall be kept in an interest-bearing fixed deposit.

**42.** If the said amount is not deposited, the plaintiff shall be entitled to summons for judgment and the leave to defend application shall be considered as having been dismissed.

**43.** List before the Joint Registrar (Judicial) on 22<sup>nd</sup> April 2025 for further directions and noting compliance, if any.

**44.** Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)**  
**JUDGE**

**MARCH, 2025 /RK/na**