HC-KAR
NC: 2026:KHC:38362
WP No. 10354 of 2026
CNR: KAHC010235752026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF JULY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 10354 OF 2026 (GM-CPC)

BETWEEN:

T.S.SATEESH
AGED ABOUT 57 YEARS,
SON OF TIRUMALA SRIRANGACHAR,
RESIDING AT NO. 17,
MANTRI ALTIUS, CUBBON ROAD,
OPPOSITE THE HINDU OFFICE,
BENGALURU -560 001

…PETITIONER

(BY SRI.DHANANJAY JOSHI, SENIOR COUNSEL FOR
SRI.KASHYAP N. NAIK, ADVOCATE)

AND:

M/S GODREJ PROPERTIES LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF
THE COMPANIES ACT, 2013,
HAVING ITS REGIONAL OFFICE AT
LEVEL 10, PRESTIGE OBELISK,
KASTURBA ROAD, AMBEDKAR VEEDHI,
BENGALURU 560 001,
REPRESENTED BY ITS
AUTHORIZED REPRESENTATIVE
MS.G.APARAJITA

…RESPONDENT

(BY SRI.DHYAN CHINNAPPA, SENIOR COUNSEL FOR
SRI.MOHAMMED SHAMEER, ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECTIONS MODIFYING THE IMPUGNED ORDER DATED 04.03.2026 PASSED BY THE LXXXIX ADDL. CITY CIVIL AND SESSIONS JUDGE COMMERCIAL COURTS DIVISION, BENGALURU (CCH-90) BENGALURU IN COM. OS NO. 1151/2025 THEREBY GRANTING THE PETITIONER UNCONDITIONAL LEAVE OR IMPOSE SUCH OTHER REASONABLE CONDITIONS WHILE GRANTING SUCH LEAVE TO DEFEND THE UNDERLYING SUIT WITH LIBERTY TO FILE HIS WRITTEN STATEMENT WITHIN A REASONABLE TIME FIXED BY THIS COURT (ANNEXURE-A).

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 14.07.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CAV ORDER

Aggrieved by the order dated 04.03.2026 passed in I.A.No.1 in Com.O.S.No.1151/2025 by the LXXXIX Additional City Civil and Sessions Judge, Commercial Courts Division, Bengaluru, the petitioner/defendant is before this Court.

2. The respondent herein has filed Com.O.S.No.1152/2025. In that, the petitioner herein has filed I.A.No.1 under Order XXXVII Rule 3 of the CPC seeking leave to defend the suit. The Commercial Court has allowed the application on the condition that the petitioner/defendant shall

furnish a Bank Guarantee for an amount of Rs.5,00,00,000/- within 30 days from the date of the order. Aggrieved thereby, the defendant is before this Court.

3. While passing the impugned order, the Commercial Court observed that it is of the view that the defendant has made out a prima facie case that he has got a substantial defense to raise before the Court by filing written statement with respect to the point of limitation. Admittedly, the question of limitation is both question of law and fact and therefore, issue pertaining to limitation needs to be adjudicated after a full fledged trial. Another substantial defense which is raised by the defendant is that he has got every right to forfeit the amount of Rs.5 crores as the plaintiff has violated the terms of the term sheet and the plaintiff failed to perform his obligation under the term sheet and agreement.

4. The Commercial Court observed that when the defendant contends that he has the right to forfeit the advance amount of Rs.5 crores and that he is further entitled to damages of Rs.50 crores for the alleged loss caused by the plaintiff, the Commercial Court was of the view that the

defendant should be given an opportunity to raise his defence. The defendant's case is that he has invested the amount from his own pocket and, therefore, he is entitled to forfeit the advance amount of Rs.5 crores. In the opinion of the Commercial Court, this assertion of the defendant needs to be tested during the course of the trial. Further, in the case on hand, as per the plaintiff's case, the defendant, in order to repay Rs.5 crores, issued a cheque, and the said cheque was dishonoured. If the defendant had the right to forfeit the said amount, then what made him issue a cheque for Rs.5 crores to the plaintiff is an issue which needs to be thrashed out during the course of the trial.

5. The Commercial Court further observed that considering the documents produced by the plaintiff and the averments made by the defendant in the application, the defendant has a substantial defence regarding the question of limitation, forfeiture of Rs.5 crores, and the plaintiff's failure to comply with the terms of the term sheet. Hence, the defendant should be given an opportunity to file the written statement and to lead evidence. The Commercial Court held that the Court

has to balance the rights of both parties evenly and, if necessary, by imposing conditions regarding time, mode of trial, or security. Accordingly, I.A.No.1 was allowed on the condition that the defendant shall furnish a Bank Guarantee for Rs.5 crores.

6. Learned Senior counsel Sri.Dhanjay Joshi, representing the learned counsel for the petitioner has drawn the attention of this Court to the order passed by the Commercial Court, noting that the Court has recorded satisfaction that the defendant could make out a substantial case, and the leave was granted. After granting the leave, the Commercial Court ought not to have imposed condition. Learned Senior Counsel has drawn the attention of this Court to the judgment of the Apex Court in ***B.L. Kashyap and Sons Ltd. Vs. M/s. JMS Steels and Power Corporation and Another***[1]. He has relied on paragraph No.33 which reads thus:

> ***"33. It is at once clear that even though in the case of IDBI Trusteeship, this Court has observed that the principles stated in paragraph 8 of Mechelec Engineers' case shall stand superseded in the wake of amendment of Rule 3 of Order XXXVII but, on the core theme, the principles remain the same that grant of***

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[1] (2022) 3 SCC 294

> ***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."***

7. Learned Senior counsel has also relied on the judgment of the Apex Court in ***IDBI Trusteeship Services Limited Vs. Hubtown Limited***[2]. Relying on these judgments, it is submitted that the Commercial Court has failed to consider the purport of Order XXXVII Rule 3 of CPC and, having recorded a finding that there is a substantial defence to the defendant, ought not to have imposed the condition.

8. Learned Senior counsel Sri.Dhyan Chinnappa, representing the learned counsel for respondent, submits that the provision itself makes it clear that in a given case the Commercial Court can impose conditions. The Commercial Court, having given leave to defend and considering the respective cases of the parties and balancing their interests, has only asked for a deposit of the amount. There is no order for the plaintiff to withdraw the amount. In those

[2] (2017) 1 SCC 568

circumstances, there is no hardship to the defendant. It is submitted that, in fact, the defendant stated that he is entitled for damages, has not filed any counter claim so far. Without filing a counter claim, they are not entitled for any such relief. It is submitted that all these aspects were rightly considered by the trial Court, and the Commercial Court has rightly passed the order, and there are no grounds to interfere with the impugned order.

9. Having heard the learned Senior counsels on either side, perused the material on record. The principal question that fall for consideration is ***"whether, after recording a finding that the defendant has disclosed a substantial defence within the meaning of Order XXXVII Rule 3(5) of the CPC, the Commercial Court could nevertheless impose a condition requiring the furnishing of a bank guarantee"***. Order XXXVII of the CPC embodies a special procedure intended to ensure expeditious adjudication of commercial and other specified claims where the defendant does not possess a real defence. Simultaneously, the provision protects defendants who demonstrate that the dispute is not

one capable of summary disposal. The amended Rule 3(5), as applicable to commercial disputes, consciously classifies the nature of the defence disclosed by the defendants. The discretion conferred upon the Court is therefore neither absolute nor unstructured. It is guided by the quality of the defence. Where the Court finds that the defence is frivolous, vexatious or illusory, leave may be refused. Where the defence appears plausible but doubtful or improbable, conditional leave may be granted.

10. However, where the defendant discloses a substantial defence, the legislative consequence is that the defendant is entitled to defend the suit without onerous conditions. The statutory clarification cannot be diluted by importing equitable considerations alien to the scheme of the provision. In the present case, the Commercial Court has consciously recorded that the petitioner has disclosed a substantial defence. That finding has not been questioned by the respondent. The Commercial Court has further observed that the issues raised by the petitioner cannot be adjudicated without recording evidence and that the controversy requires a full-fledged trial.

These findings necessarily exclude the possibility of the petitioner's defence being characterised as illusory, shown, or improbable. The petitioner disputes the very existence of an enforceable liability. The specific plea is that the respondent committed breaches of obligation, that the petitioner was entitled to forfeit the amount, and that consequently the cheque does not represent a legally recoverable debt. The petitioner further asserts that it has itself suffered damages. Whether such plea ultimately succeeds is beside the point. At the stage of considering leave to defend, the trial Court is not expected to pronounce upon the correctness of the defence, but only upon its nature. The Commercial Court itself having found that the defence is substantial, it was not open to proceed as though the respondent's claim deserves protection by directing security. Much emphasis was laid by the respondent on the absence of a counterclaim for damages. This submission does not commend acceptance. A counterclaim enables the defendant to obtain an affirmative decree in his favour. Its absence does not prevent the defendant from disputing the plaintiff's entitlement or from pleading that the plaintiff's own breach is entitled to any relief. The maintainability of a claim on the existence of a substantial defence operates in a different sphere.

11. Learned Senior counsel appearing for the respondent would contend that the Commercial Court has merely balanced the competing interests of the parties by directing the furnishing of a bank guarantee and that no prejudice is caused to the defendant. But this submission overlooks the statutory framework under Order XXXVII Rule 3(5) of the CPC. The jurisdiction under Order XXXVII Rule 3(5) of the CPC is not founded on abstract notions of equity or convenience. The legislature has itself balanced the rights of the plaintiff and the defendant by prescribing different consequences depending upon the nature of the defence. The Court recorded that the defendant has disclosed a substantial defence and the consequence is the grant of unconditional leave. The Commercial Court cannot substitute the legislative mandate with its own perception of what may appear to be an equitable arrangement between the parties. Judicial discretion cannot travel beyond the limits prescribed by the statute. The

respondent's contention that the plaintiff's monetary interest deserves protection cannot justify the condition imposed.

12. The Commercial Court itself provides a separate and distinct remedy when the plaintiff seeks security for the satisfaction of a prospective decree. The jurisdiction under Order XXXVII Rule 3(5) of the CPC cannot be converted into a substitute for attachment before judgment. The object of conditional leave is not to secure the plaintiff's claim but to regulate the defendant's right to defend where the defence is found to be doubtful or lacking credibility. The direction given by the Commercial Court to furnish a bank guarantee virtually proceeds on the premise that the respondent possesses a superior prima facie entitlement to the suit amount. Notwithstanding the Commercial Court's own finding that the petitioner has disclosed a substantial defence, such a course necessarily prejudices the controversy. If the petitioner's plea that he was entitled to forfeit the amount ultimately succeeds, the very foundation of the respondent's claim would disappear. Whether the plea of forfeiture is legally sustainable can only be determined after the parties adduce evidence. To compel the

petitioner to secure the entire claim, pending such adjudication, amounts to treating the defence as inferior despite the Court's own conclusion to the contrary.

13. Accepting the submission of the learned Senior counsel for the respondent would produce consequences inconsistent with the legislative scheme. In every commercial suit involving a substantial monetary claim, the plaintiff could seek security, notwithstanding the existence of a substantial defence. Such an interpretation would obliterate the distinction drawn by the legislator between a substantial defence and a plausible but doubtful defence, rendering the statutory classification redundant. The Commercial Court must give full effect to every expression employed by the legislation, not adopt an interpretation which reduces any part of the provision. Hence, in the considered opinion of this Court, the impugned order suffers from an inherent inconsistency, having unequivocally held that the petitioner has disclosed a substantial defence requiring adjudication at trial. The Commercial Court ought not to have burdened the petitioner with the obligation of furnishing the bank guarantee and

securing the suit claim. The finding regarding the nature of the defence and the consequential condition cannot legally stand. The discretion vested under Order XXXVII Rule 3(5) of CPC has been exercised on an erroneous understanding of the statutory scheme. It is needless to observe that this Court has not expressed any opinion on the merits of the rival claims. Both the parties are at liberty to establish their liability and their case before the Commercial Court in accordance with law. Accordingly, the issue is answered in favour of the petitioner. Hence, this Court is passing the following order:

ORDER

i. The order dated 04.03.2026 passed in I.A.No.1 Com.O.S.No.1151/2025 by the LXXXIX Additional City Civil and Sessions Judge, Commercial Courts Division, Bengaluru, is **set aside**, as far as imposing the condition of furnishing the Bank Guarantee for an amount of Rs.5,00,00,000/- is concerned.

ii. The finding recorded by the Commercial Court that the petitioner has a substantial defence within the meaning of Order XXXVII Rule 3(5) of the CPC is affirmed.

iii. Accordingly, the writ petition is ***allowed***.

iv. All I.As. in this petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

MEG
List No.: 1 Sl No.: 0