

2025 LiveLaw (SC) 969

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
AHSANUDDIN AMANULLAH; J, S.V.N. BHATTI; J.
SLP (C) NO. 1134 OF 2024; September 25, 2025

EXECUTIVE TRADING COMPANY PRIVATE LIMITED
versus
GROW WELL MERCANTILE PRIVATE LIMITED

Code of Civil Procedure, 1908 (CPC) - Order XXXVII Rule 3 - Whether in a summary suit under Order XXXVII CPC, the court may allow a reply/defence without requiring an application for leave to defend as mandated - The Supreme Court explained the steps under Order XXXVII Rule 3 CPC for summary suits, emphasizing that - i. Defendant must, after entering appearance, apply for leave to defend disclosing genuine and substantial defence. ii. Court cannot allow the reply/defence to be filed without such application, lest the distinction between regular and summary suits is lost - Procedural deviation adopted by the High Court was held unsustainable and contrary to statutory scheme - Setting aside of the impugned order does not foreclose any options available to the defendant as per law and shall not prejudice the case of either party - Allowing a reply/defence on merits in a summary suit without leave of court effaces the procedural safeguard built into Order XXXVII CPC - Appeal allowed. [Paras 5 - 9]

Appearance: Mr. Debesh Panda for the petitioner Mr. Sanampreet Singh for the respondent

J U D G M E N T

S.V.N. BHATTI, J.

- 1.** Leave granted.
- 2.** We have heard Advocates Mr. Debesh Panda and Mr. Sanampreet Singh for the parties. The appeal is at the instance of the Plaintiff in Commercial Summary Suit No. 19 of 2020 before the High Court of Judicature at Bombay and challenges the order dated 05.12.2023. To make the narrative brief, the order impugned is excerpted hereunder:
“1. Let the reply to the Summons for Judgment be filed by 20th December, 2023 with a copy to the other side. Rejoinder, if any, be filed by 9th January, 2024 with a copy to the other side.
2. List on 9th January, 2024.”
- 3.** The parties to the civil appeal had business transactions for reasonably good time. The present Commercial Suit is filed to recover the alleged admitted and confirmed total liability of Rs. 2,15,54,383.50/- together with interest at 24% per annum amounting to Rs. 2,38,50,845.00/-.
- 4.** The suit was filed on 15.10.2019 under Order XXXVII of the Civil Procedure Code, 1908 (‘the CPC’). Summons were issued on 15.01.2020, along with the Complaint and Annexures, which have been stated as served on the Defendants on 18.01.2020. On 28.01.2020, the Defendant entered appearance in terms of sub-Rule (3) of Rule 3 of Order XXXVII of the CPC. The Plaintiff filed Summons for Judgment No. 75 of 2021 in Commercial Summary Suit No. 19 of 2020. The Plaintiff alleges that the Summons for Judgment No. 75 of 2021 was served on the Defendant on 11.01.2022. According to the plaintiff, the Defendant ought to have, if advised, filed for leave to defend by disclosing the defence available against the claim in the Summary Suit.

5. Admittedly, instead of filing an Application seeking leave to defend, the Defendant filed an I.A. (L) No. 7771 of 2022 praying for the dismissal of the suit for non-compliance with Section 12A of the Commercial Courts Act. On 08.04.2022, the application was allowed, the parties were referred to mediation, and the Summary Suit was kept in abeyance. The Mediation Report dated 09.02.2023 was filed by the Mediator. The I.A. No. 1353 of 2023 was filed to allow the Plaintiff to amend the plaint and summons for judgment as per the Schedule annexed, and the same was allowed by order dated 29.08.2023. The operative portion reads as follows:

“6. Having heard the learned counsel and having perused the papers and proceedings, the draft amendment as requested by way of praecipe is allowed. Let the amendment to the plaint as well as the summons for judgment be carried out within a period of two weeks. 7. Let the amended plaint as well as the summons for judgment be served upon the other side within a period of one week thereafter.”

The defendant filed an Application for condoning the delay in applying for leave to defend on 23.01.2024. The said application is still pending before the High Court.

6. By referring to the above chronological undisputed events, Advocate for Plaintiff contends that the step ordered by the High Court, allowing reply to the Summons for Judgment, is procedurally incorrect and unsustainable. The requirement in terms of sub-Rule (5) of Rule 3 of Order XXXVII of the CPC is to file an application seeking leave to file the defence. In the application filed praying for leave, the court decides whether a case for granting leave to defend is made out or not, considering the nature of the recovery. At the present stage, we are not determining whether a case for granting leave is made out or not, but the precise question is whether the court could have permitted filing a reply/defence without even praying for leave, setting out the available defence, etc.

7. To appreciate the procedural objection pointed out by the Plaintiff, the sequence of steps under Order XXXVII Rule 3 sub-Rules (1) to (7) of the CPC is set out as follows:

7.1 On filing the Summary Suit, the plaintiff must serve the defendant with the plaint and annexures, together with the summons.

7.2 The defendant has ten days to enter an appearance, in person or through a pleader, and provide a service address. On the same day, the defendant must notify the plaintiff or its pleader of its appearance.

7.3 The plaintiff then serves a summons for judgment on the defendant in the court-prescribed format, supported by an affidavit verifying the cause of action, the amount claimed, and the belief that the defendant has no defence.

7.4 Thereafter, the defendant has ten days to apply for leave to defend by filing an affidavit disclosing a genuine and substantial defence. The court may grant leave to defend unconditionally or on such terms that may appear to be just.

7.5 The court shall not refuse leave unless the defence is frivolous or vexatious. Further, if the defendant admits to owing part of the amount, it must deposit that amount in court to get the leave to defend.

7.6 If the defendant does not apply for leave or its application seeking leave is refused, the plaintiff is entitled to immediate judgment. If the court grants leave to defend but the defendant fails to comply with any condition or other directions, the plaintiff is also entitled to immediate judgment.

7.7 The court has the discretion to condone any delay in entering an appearance or applying for leave to defend if the defendant shows sufficient cause.

8. Advocate Sanampreet Singh, appearing for the Defendant, contends that the Application seeking condonation of delay is pending. Even if the application is under a wrong provision, the same is not a ground to assume that the Plaintiff is entitled to a decree. Further, the delay stated by the Plaintiff in filing the application is not correct, as it is always available to the Defendant to convince the court either to grant leave or condone the delay. He argues that the delay in filing the application, as stated by the Plaintiff, is factually incorrect.

9. After perusing the record and also the step taken by the High Court in bypassing the requirement of sub-Rules (4) and (5) of Rule 3 of Order XXXVII of the CPC; without much deliberation, we are of the view that the order impugned needs to be interfered with in as much as if a reply or defence is allowed to come on record in a summary suit without the Leave of the Court then the distinction sought to be maintained between a Suit normally instituted and Summary Suit under Order XXXVII of the CPC stands effaced. The procedural deviation goes to the root of the matter. Hence, the order impugned is set aside. The setting aside of the order impugned shall not be understood as foreclosing the options available to the Defendant in the Judgment Summons already issued, or the observations made in the present order shall not prejudice the case of either party.

10. The appeal stands allowed by leaving the option to the parties to pursue remedies in accordance with the steps envisaged in Rule 3 of Order XXXVII of the CPC. There shall be no order as to costs.

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