

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM No. 344/2025 in CR No. 02/2025 CM No. 345/2025
Caveat No. 202/2025

Bilal Ahmad Bhat ...Petitioner(s)
Aged 47 Years
S/o Mohd. Sultan Bhat
R/o Nadirgund Peerbagh Srinagar.

Through: Mr. Aqib Aijaz, Advocate.

Vs.

Mohammad Shafi Bhat ...Respondent(s)
S/o Abdul Rahim Bhat
R/o Nadirgund Peerbagh Srinagar.

Through: Mr. Abid Zahoor, Advocate with
Mr. Maroof Khan, Advocate

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
03.02.2025

(ORAL)

1. The instant Revision Petition has been filed by the defendant petitioner herein under Section 115 of the Code of Civil Procedure for setting aside of order dated 02.01.2025 (for short the impugned order) passed by the court of 3rd Additional District Judge, Srinagar, (for short the trial court) in case titled as "*Mohammad Shafi Bhat Vs. Bilal Ahmad Bhat*".
2. Facts giving rise to the filing of instant petition reveals that the plaintiff respondent herein filed a suit under Order 37 of the Code of Civil Procedure against the defendant petitioner herein for recovery of an amount of Rs.11 Crores along with an interest at the rate of 18% on the premise that the defendant petitioner herein obtained an amount of Rs.11 Crores from the plaintiff respondent herein for purchasing of land and in this regard executed an agreement to sell dated 02.03.2020, a D.P Note dated 02.03.2020, as also a receipt dated 02.03.2020 including an agreement dated 02.03.2020 and that a further agreement came to be executed between the parties on 19.03.2020 after the defendant petitioner herein failed to adhere to the

terms and conditions of the earlier agreement and on account of the failure of the defendant petitioner herein to fulfill the terms and conditions of the agreements as also to repay the amount of Rs.11 Crores to the plaintiff respondent herein, the plaintiff respondent herein was left with no option but to institute the suit.

3. During the pendency of the suit, the defendant petitioner herein entered his appearance before the trial court and filed an application on 06.11.2021 seeking leave to defend the suit on the grounds that agreement claimed to have been executed inter-se the parties is vexatious, non-existent and that the plaintiff respondent herein has approached the court with unclean hands and concealed vital facts and that the defendant petitioner herein has solid defence and evidence available against the suit of the plaintiff respondent herein and that the documents relied upon by the plaintiff respondent herein in the suit are non-existent as the claim of the plaintiff respondent herein is bogus and the documents in question got executed forcibly by the plaintiff respondent herein on fake promises while blackmailing the defendant petitioner herein of dire consequences and that, in fact, the plaintiff respondent herein extracted a huge amount of Rs.4,10,00,000/-from time to time from defendant petitioner herein with effect from January 2020 till August 2020.
4. The trial court after considering the said application filed by defendant petitioner herein upon filing of objections by the plaintiff respondent herein in terms of the impugned order though opined that the defence setup by the defendant petitioner herein is plausible but improbable, granted conditional leave to the defendant petitioner herein to defend the suit subject to furnishing of bank guarantee of 50% of the amount claimed by the plaintiff respondent herein in the suit, within a period of one month from the date of passing of order.
5. The defendant petitioner herein has challenged the impugned order on multiple grounds urged in the petition.

Heard counsel for the defendant petitioner herein as also counsel for the plaintiff respondent herein being on caveat and perused the record.

6. Caveat discharged.
7. The counsel for the defendant petitioner while making his submissions reiterated the contentions raised and grounds urged in the petition, whereas on the contrary the counsel for the plaintiff respondent herein raised a preliminary objection qua the maintainability of the petition though opposed the submissions of counsel for the defendant petitioner on merits as well.
8. Law in regard to the “Leave to Defend” under Section 37 CPC is no more res-integra and stands settled by the series of the judgements passed by the Apex Court from time to time including in case titled as **“Mechelec Engineers and Manufacturers V. Basic Equipment Corporation”** reported in **1976 (4) SCC 687**, wherein at para 8 following has been laid: -

“8. In Smt. Kiranmoyee Dassi & Anr. v. Dr. J. Chatterjee, Das. J., after a comprehensive review of authorities on the subject, stated the principles applicable to cases covered by order 17 [C.P.C.](#) in the form of the following propositions:

- "(a) If the Defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the Defendant is entitled to unconditional leave to defend.
- (b) If the Defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the Defendant is entitled to unconditional leave to defend.
- (c) If the Defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the Plaintiff is not entitled to judgment and the Defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security.
- (d) If the Defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the Plaintiff is entitled to leave to sign judgment and the Defendant is not entitled to leave to defend.
- (e) If the Defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the Court may

protect the Plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the Defendant on such condition, and thereby show mercy to the Defendant by enabling him to try to prove a defence".

The aforesaid principles have been reiterated by the Apex Court in subsequent judgements as well, including in case titled as “**M/s Sunil Enterprises and Anr. Vs. Sbi Commercial and International Bank Ltd.**”, reported in **1998 (4) SCC 354** as also in case titled as “**Sify Limited Vs. First Flight Couriers Limited**” reported in **2008 (4) SCC 246**.

9. Keeping in mind the aforesaid position of law laid down by the Apex Court and reverting back to the case in hand, it is admitted fact that the trial court has specifically opined while considering the respective pleadings of the parties qua the issue of grant or refusal of leave to the defendant petitioner herein that the defence setup by the defendant petitioner is plausible but improbable. Once the trial court had observed and opined that the defendant petitioner herein has disclosed such facts which are sufficient to entitle him to defend the suit, the trial court ordinarily ought to have granted unconditional leave to the defendant petitioner herein, in that, the Apex court in the judgement passed in the **Mechelec Engineering supra**, has, inter-alia provided that if the defendant has no defence or the defence setup is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign the judgement and the defendant is not entitled to leave to defend and that if the defendant discloses such facts as may be deemed sufficient to entitle him to defend which leads to the inference that at the trial of the action the defendant may be able to establish a defence to the plaintiff's claim, the plaintiff is not entitled to judgement and the defendant is entitled to leave to defend, but in such a case the Court may in its discretion impose condition as to the time or mode of trial but not as to the payment into Court or furnishing security.
10. Perusal of the impugned order manifestly reveals that the trial court has overlooked the aforesaid position and principles of law and on one hand though has opined that the defence setup by the defendant

petitioner is plausible, but improbable yet on the other hand has bound down the defendant petitioner herein requiring the defendant petitioner herein to furnish security in the shape of bank guarantee to the tune of 50% of the amount covered in the suit. The trial court manifestly has erred and has in the process caused failure of justice. Having held that the trial court has misdirected itself having overlooked the principles of law laid down by the Apex court in the judgement supra and in the process caused failure of justice, this court is of the considered opinion under these circumstances to treat the instant petition as one under Article 227 of the Constitution in order to secure the ends of justice. Thus the preliminary objection raised by counsel for the plaintiff respondent herein qua the maintainability of the petition is turned down.

11. Accordingly, the instant petition succeeds and the impugned order insofar as it grants conditional leave to defendant petitioner herein requiring the defendant petitioner herein to furnish a bank guarantee of 50% of the suit amount is set aside and the defendant petitioner herein shall be deemed to have been granted unconditional leave to defend the suit.
12. The trial court accordingly is directed to proceed further in the matter in accordance with law.
13. Disposed of.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

03.02.2025

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Whether the order is speaking? Yes

Whether approved for reporting ? Yes