

**(2008) 12 DEL CK 0180**

**Delhi High Court**

**Case No:** FAO (OS) No. 227 of 2003

Bank of India and Another

APPELLANT

Vs

Madura Coats Ltd.

RESPONDENT

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**Date of Decision:** Dec. 19, 2008

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 37 Rule 3(5), 151

**Citation:** (2009) 157 DLT 240

**Hon'ble Judges:** Manmohan Singh, J; A.K. Sikri, J

**Bench:** Division Bench

**Advocate:** Y.P. Narula, Sanjay Gupta and Amit Shukla, for the Appellant; Girdhar Govind and Noorun Nahar Firdausi, for the Respondent

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### **Judgement**

Manmohan Singh, J.

This appeal has been filed by the appellants ("defendants No. 1 and 2" in the suit) against the order passed by the learned Single Judge on 21st April, 2003 whereby the application of appellants for leave to defend was dismissed and the suit was decreed in favour of the respondent ("plaintiff" in the suit).

2. The plaintiff filed the suit for recovery of Rs. 87,99,121/- along with interest under Order 37 of CPC against the defendants (appellants herein) and M/s Hilton Rubbers Ltd. i.e Defendant No. 3.

3. It was submitted that M/s Hilton Rubbers Ltd. i.e. Defendant No. 3 had placed orders with the plaintiff for supply of Nylon and Polyester based fabrics vide different Purchase Orders, details of which are mentioned hereinbelow:

(i) Purchase Order No. 165 dated 01.02.99

(ii) Purchase Order No. 168 dated 13.02.99

(iii) Purchase Order No. 169 dated 01.03.99

(iv) Purchase Order No. 170 dated 01.03.99

(v) Purchase Order No. 173 dated 22.03.99

(vi) Purchase Order No. 172 dated 04.03.99

(vii) Purchase Order No. 174 dated 11.03.99

4. M/s Hilton Rubbers Ltd. had arranged to open irrevocable Letters of Credit through plaintiff in his favour being the beneficiary for the said irrevocable Letters of Credit.

5. The State Bank of India, Industrial Finance Branch, Madurai acted as advising/negotiating bank for the payment of material supplied against the aforesaid Purchase Orders. The details of said irrevocable Letters of Credit opened by the defendants in favour of plaintiff are as follows:

(i)	LC No. NDCBB/6041/ILC/16/10 dated 10.05.1999 for	Rs. 53,54,000.00
(ii)	LC No. NDCBB/6041/ILC/15/143 dated 23.03.1999 for	Rs. 11,51,000.00
(iii)	LC No. NDCBB/6041/ILC/16/28 dated 23.06.1999 for	Rs. 19,50,000.00
(iv)	LC No. NDCBB/6041/ILC/15/136 Dated 10.03.1999 for	Rs. 10,00,000.00
(v)	LC No. NDCBB/6041/ILC/15/144 dated 24.03.1999 for	Rs. 10,46,000.00

6. It is averred in the plaint that despite repeated requests made by the plaintiff, the defendant did not make payment under the respective irrevocable letters of credit. The plaintiff has also submitted that the letters of discrepancies alleged to have been issued by the defendants were never sent or issued by the Defendants to the advising/negotiating Bank and the same were fabricated by the Defendants after the plaintiff and advising/negotiating Bank repeatedly pressed for payment of bills sent under the aforesaid Letters of Credit. Thus, the suit was filed by the plaintiff against the Defendant for non-payment of the amounts under Letters of Credit.

7. The plaintiffs in the plaint has specifically pleaded the alleged letters of discrepancies to him and SBI, Industrial Finance Branch, Madurai (Negotiating Bank) with regard to the Letters of credit and alleged them to be fabricated/manufactured/afterthought documents. Para 7, 8 and 10 in this regard reads as under:

7. The plaintiff submits that despite repeated requests made, the defendant No. 1 did not make payment under the respective irrevocable LCs. On approaching the defendant No. 1 for payment the plaintiff was conveyed in a very casual manner that there were certain discrepancies in the LC's and that the defendants had written

some alleged letters to SBI Industrial Finance Branch, Madurai. The copies of the alleged letters of discrepancies alleged to have been issued by defendant No. 1 mentioning the alleged discrepancies and handed over to the representatives of the plaintiff by the defendant No. 1 when the plaintiff's representatives called upon the defendant at its office are annexed as Annexure D-1 to D-4 in the list of documents attached with the plaint.

8. The plaintiff submits that the alleged letters of discrepancies said to have been issued by defendant No. 1 to advising/negotiating Bank mentioning the discrepancies were nothing but an afterthought, anti-dated and, completely fabricated documents and were never sent or issued by the defendant No. 1 to the advising and negotiating bank and were created after the plaintiff and advising and negotiating bank repeatedly pressed for payments of bills sent under the aforesaid LCs. The fabrication and manufacture of alleged letters of discrepancies is further borne out from the alleged letter dated 13.3.99 of defendant No. 1 wherein the mention of LCs and bills of dates subsequent to the dated of alleged letters i.e 23.3.99 and 24.3.99 has been made. How could the defendant No. 1 mention in the said alleged letter of discrepancy dated 13.3.99 LCs of dated 23.3.99 and 24.3.99 and bills of subsequent date. When the plaintiff brought the fact of issue of alleged letters of discrepancies by defendant No. 1 to the knowledge of State Bank of India, Industrial Finance Branch, the advising and negotiating Bank The State Bank of India were surprised and taken aback that defendant No. 1 had chosen to refer to some alleged letters of discrepancies which the State Bank of India did not receive or was not even aware of. The State Bank of India promptly wrote a letter dated 21.8.99 to defendant No. 1 pointing out that the plaintiff had brought to its knowledge the 4 letters purported to have been written by defendant No. 1 to them. The State Bank of India in its letter dated 21.8.1999 stated that they were surprised to note that none of the 4 letters said to have been sent to them on different dates ever reached them. This corroborates the contention of the plaintiff that the said 4 letters (Annexure D-1 to D-4) in the list of documents were fabricated and manufactured documents, were an afterthought to raise the objection in the LC which did not exist so as to avoid their obligation of making payment covered under the relevant irrevocable LCs. The letter dated 21.8.99 of State Bank of India is annexed as Annexure-F with list of documents of the plaint. The said alleged letters of discrepancies have not reached State Bank of India, Madurai, till date.

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10. The plaintiff submits that without prejudice to its contention that defendant No. 1 had fabricated alleged letters of discrepancies (Annexure D-1 to D-4) several meetings with plaintiff's representative, the defendant No. 1 released proceeds against LC No. NDCBB/6041/LC/15/144 dated 24.3.99 to the extent of Rs. 10,45,612.00 to the collecting bank as recently as on 28.8.99. It is surprising as to how defendant No. 1 could release the payment of one LC despite alleged

discrepancy and withhold the payment of Rs. 83,54,273.00 covered under the other LCs on the alleged ground of discrepancy, which are similar to that of LC against which the payment has been made on 28.8.99.

8. Even in the other paragraphs of the plaint the plaintiff has urged that the defendant bank has fabricated the documents of the alleged discrepancies to deprive the plaintiff of its legitimate dues. However, it was submitted that the discrepancies mentioned by the bank are no discrepancies in the eyes of law or otherwise.

9. The plaintiff had also preferred Writ Petition No. 5894/1999 against the defendants and others on almost the similar grounds as pleaded in the suit which was dismissed inter alia on the ground that relief claimed in the suit as well as this petition were same.

10. The Defendant filed an application bearing IA No. 10691/2000 under Order XXXVII Rule 3(5) read with Section 151 of CPC seeking leave to defend the suit inter-alia, on the grounds that there are allegations of false claims, fabrication of documents, alleged not to have been issued, manufacturing of letters of discrepancies; commission of criminal offences, which needs trial and, hence, the suit under Order XXXVII is bad for this ground and unconditional leave to defend the suit be granted on this ground alone.

11. It was further alleged that the dispute is a pure dispute on contract/commercial transaction and the conduct of Defendants is in the discharge of their contractual duties in the matter of establishment and payment under Letters of Credit. The refusal to make payment is on the basis of the discrepancies as observed in the documents received under letters of credit, hence the bank has acted on its commercial judgment in accordance with its contractual rights.

12. It is submitted that the payment of Rs. 10,45,612/- under discrepant Letter of Credit was made by the Defendant No. 1 on 28.8.1999, on specific instructions vide letter dated 27.08.1999 from the Defendant No. 3, for which funds were also arranged by them. Each Letters of Credit is a separate contract, and hence, documents presented thereunder form the subject matter of different contracts. Payment of a document under one Letter of Credit, therefore, does not constitute any obligation to make payments towards other discrepant documents presented under the same or other Letters of Credit.

13. In the reply filed by the plaintiff to the application of the defendant seeking leave to defend, it was submitted that the liability of the defendants arises out of letters of credit issued by the defendants and in terms thereof the liability stands admitted by the defendants and as such, they are not entitled to leave to defend. The defendants cannot absolve themselves of the liability merely by stating that the transactions took place between plaintiff and Defendant No. 3. It was alleged that the letters of credit were issued by the defendants on the basis of which the material was

supplied to Defendant No. 3 and the alleged letters were forged, fabricated and created to defeat the claim of the plaintiff.

14. Learned senior counsel for the defendants/appellants has vehemently argued that the plaintiff himself has made allegations of fraud and forgery against the defendant not only in the civil suit decided by the Ld. Single Judge but also in the writ petition filed by plaintiff. He has argued that the Ld. Single Judge has failed to consider the disputes existing and pending between the parties. The Ld. Single Judge failed to appreciate that the defense of the defendants raised "triable issues", warranting the grant of leave to defend.

15. Learned Counsel for the defendant has also submitted that the Ld. Single Judge failed to appreciate the fact that the refusal to make payment under Letters of Credit was on the basis of the discrepancies as observed in the documents received under Letters of Credit. The discrepancies on account of which payment under Letter of Credit were declined, were duly intimated by the defendant. The letters of intimation by the defendant were disputed by the plaintiffs and that itself had given rise to "triable issue". The allegation of fraud and forgery of the documents could have only been decided by way of trial and therefore the defendants were entitled to unconditional leave to defend.

16. Learned Counsel for the plaintiff/respondent, on the other hand while countering the argument of the learned Counsel for the defendants has stated that there are discrepancies in the documents and has disputed that no intimation was sent to the negotiating Bank informing discrepancies and alleged letters produced and relied upon by the defendant are fabricated and manipulated document and the entire defence of the defendants are an afterthought.

17. We have considered the rival submissions of the parties and have also gone through the relevant record. The learned Single Judge while dismissing the suit against Defendants observed that since Defendant No. 3 is covered under the protection of SICA, the plaintiff had no reason to look towards it, the liability of the bank is de hors and not connected in any manner with Defendant No. 3 and rejected the application of the defendant Nos. 1 and 2/appellants seeking leave to defend vide his order dated 21st April, 2003 and passed decree in favour of the plaintiff and against the defendant Nos. 1 and 2. It was further observed that there is no allegation of any irregularity committed by the plaintiff in so far as the invocation of the letters of credit is concerned and leave to defend application is declined to the bank..

18. It is settled law that in a summary suit, in order to entitle the defendants for leave to defend, it would be incumbent upon them to show that they have a substantial defence and triable issue to raise and their defence is not frivolous or vexatious. AIR 1988 Delhi 308(310).

19. As a rule, where a valid defence or triable issue is disclosed and defence is bona fide, the leave should be granted unconditionally. Following are the principles that are to be followed by the Court while considering the question of granting leave to defend:

(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 not entitled to 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 shows 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 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 given to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence. [Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation](#) .

20. It is also well settled law that at the stage of granting leave to defend, parties rely on affidavits in support of the rival contentions. Assertions and counter-assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and prima facie material available to show that the facts disclosed in the application filed by the applicant seeking leave to defend were either frivolous, untenable or most unreasonable. No hard and fast rule or straight jacket formula can be laid down for judging this question.

21. The Bombay High Court in [Defiance Knitting Industries Pvt. Ltd. Vs. Jay Arts](#), reiterated the abovesaid position while holding that:

While giving leave to defend in 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. The question whether the defence raises a triable issue or not has to be ascertained by the court for 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.

(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.

22. In *John Impex (P) Ltd. Vs. Surinder Singh and Others*, (2003) 9 SCC 176 it was held:

The submission on behalf of the respondent is that the lease deed clearly confirms the title of the respondent. But this again is a matter to be considered at trial not at this stage i.e. leave to defend application. At this stage neither evidence is to be weighed nor looked into. The purpose of introducing a provision like leave to defend, is only to find out frivolous, uncontestable cases at the initial stage, not to eliminate other class of cases which require adjudication after contest. In other words if there be no conceivable contest possible the litigation has to be nipped in the bud.

23. In AIR 1990 2218 (SC) ; it was observed as follows:

Leave is declined where the Court is of the opinion that the grant to leave would merely enable the defendant to prolong the litigation by raising untenable and frivolous defenses. The test is to see whether the defence raises a real issue and not a sham one, in the sense that if the facts alleged by the defendant are established there would be a good or even a plausible defence on those facts. If the court is satisfied about the leave it must be given. If there is a triable issue in the sense that there is a fair dispute to be tried as to the meaning of a document on which the claim is based or uncertainty as to the amount actually due or where the alleged facts are of such a nature as to entitle the defendant to interrogate the plaintiff or to cross examine his witnesses leave should not be denied. Where also, the defendant shows that even on a fair probability he has a bona fide defence, he ought to have leave. Summary judgments under order 37 should not be granted where serious conflict as to the matter of fact or where any difficulty on issues as to law arises. The court should not reject the defence of the defendant merely because of its inherent implausibility or its inconsistency.

24. Learned Counsel for the plaintiff has referred to the case of [Shakuntia and Others Vs. The State](#), where the principles for granting or refusal leave to defend are being laid down in the following words:

The principles on which courts should grant or refuse leave to defend the suit are not in doubt. Thus:

(a) 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.

(b) 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 shows 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 of furnishing security".

25. From the above said discussion, it is clear as enunciated by Apex Court in a plethora of judgments, that wherever the defense raises "triable issues", leave to defend must be granted and when that is the case it must be given unconditionally.

26. Let us now deal with the averments/defences raised in the application filed by the defendant Nos. 1 and 2 under Order 37 Rule 3(5) read with Section 151 of the Code of Civil Procedure, 1908.

27. The question before us is whether the defences raised by the defendant are prima facie valid, fair and bona fide defences which raise the real triable issue or whether those are simply sham or practically moonshine. If valid defences are raised, then ordinarily the plaintiff is entitled to a decree straightway. The following are the main defences raised by the defendant:

(a) There are allegations of false claims, fabrication of documents, alleged not to have been issued; manufacturing of letters of discrepancies; and allegation of commission of criminal offences, which needs trial;

(b) The said letters were not sent by the Bank or that the same were fabricated as an afterthought;

(c) The plaintiff who are themselves at fault for having presented discrepant documents and cannot fault the Defendant Nos. 1 and 2 for declining the payment;

(d) That on the one hand, in para 7 of the writ petition, the plaintiff have stated that alleged discrepancies in the letter of credit were learnt by them from their bankers namely Messrs. State Bank of India and in para 8 of the plaint, the plaintiff have said



that they had brought to the knowledge of their bankers, i.e., Messrs. State Bank of India regarding alleged discrepancies in the letters of credit, which State Bank of India conveyed to the defendant No. 1 through their alleged letter dated 21.8.1999;

(e) That the plaintiff had produced the documents containing the goods different than that specified in the Letter of Credit and the plaintiff was seeking payment against those goods, which were not covered under the Letters of Credit;

(f) That whereas under the terms and conditions of the Letters of Credit, the State Bank of India, Madurai Branch were not indicated as the Negotiating Bank, however, from the correspondence exchanged amongst the parties, they seemed to act as such, and hence, it was for this reason that communications were sent to them and the defendant No. 1 on several occasions sought instructions from them, which instructions never came;

(g) That the terms and conditions of the said Letters of Credit are a matter of record. As and when discrepancies were observed and found, in the documents presented, the defendant No. 1 accordingly under the terms of the Letters of Credit/provisions of U.C.P. 500/contract, made intimation, declining payments for the reasons indicating therein. As per customary banking procedure, such intimation were sent to the presenting banker. The refusal to make payment is on the basis of the discrepancies as observed in the documents received under Letters of Credit, and hence, the bank has acted on its commercial judgment in accordance with its contractual rights;

(h) The reasons for non-payment are contained in the letters which are allegedly sent by the defendant No. 1 to State Bank of India, Madurai (Negotiating Bank) and the defendant No. 1 Bank was not obliged to make payment where documents presented were not in conformity with Letters of Credits.

28. What is relevant in the present case are the terms incorporated in the guarantee executed by the bank. It is well settled law that the bank guarantee is an independent contract between the bank and the beneficiary thereof. We are of the view that since the entire dispute is based on the allegations whether there is fabrication of letters or not and whether the payment could be stopped by the defendants No. 1 and 2 on the alleged discrepancies in the document, there certainly exists a "triable issue" which needs trial and is a plausible issue which validly gives the ground to the defendants for leave to defend.

29. The application to honour the letters of credit having been conditional one, therefore, prima facie, the defendants/appellants are absolved of their liability to honour the letters of credit and to pay the value of the goods being the letters of credit a conditional contract. (Ref: [State Bank of India and others Vs. Manganese Ore \(India\) Ltd. and another,](#)

30. We are conscious of the fact that if bank guarantee is in unequivocal and unconditional terms, the bank undertakes to pay the amount without any demur or objection and irrespective of any dispute, court would refrain from issuing the injunction. But if bank guarantee is conditional, the beneficiary cannot have unfettered right to invoke the guarantee and court can issue injunction against invocation of the guarantee in view of the facts of the case.

31. Learned Counsel for the plaintiff has referred to the judgment of this Court in Laxmi Commercial Bank v. Hiralal 1981 Rajdhani Law Reporter (Note) 94; wherein leave to defend application was dismissed and it was held that the plea of defendant that there was discrepancy in the documents is hollow as defendant was given 7 days to make the payment. If there was any discrepancy in the documents, same should have been brought out within 7 days and on expiry of this, liability, of defendant became absolute.

32. We feel that the said judgment does not help the case of the plaintiff since in the present case, facts and circumstances are that the defendant No. 1 allegedly written four letters dated 8.4.1999, 28.3.1999, 22.5.1999 and 31.5.1999 informing about the discrepancies in the letters of credit well in time though the plaintiff has denied about receiving of the said letters and made the allegation against the defendants that the said letters are false, fabricated, manufactured and afterthought. The defendants on the other hand have denied the said allegations of the plaintiff. Therefore facts in the present case are different as the alleged letters of discrepancies are in dispute as contrary to the stand taken by the plaintiff. This aspect is to be examined in the trial.

33. The learned Counsel for the defendants has pointed out and made his submissions that under the letters of credit, a conditional contract was entered into between the parties. Some of the clauses relating to the letters of credit and the alleged discrepancies raised by the defendant-bank in their four letters are shown as under:

Terms and conditions in the letters of credit Discrepancies

(a) Invoices should certify that the goods are as per importer's purchase order indent number.

(b) Evidencing current shipment of the under mentioned goods from xxxx Madurai xxxxx to xxxx Badkhasla via Delhi UP Border.

(c) Documents must be negotiated not later than 15 days after the date of shipment/dispatch and in any case, not later than the date of expiry of the credit.

(a) Description of goods differ as per the details of the invoice/letter of credits;

(b) Shipment made from Madurai to Badhkhasla instead of Madurai to Badhkhasla via Delhi UP Border

(c) Documents not negotiated within the 15 days after the date of shipment.

34. The learned Single Judge has referred various decisions in this regard on the question of unconditional Bank Guarantee and we are in agreement with the findings and principles laid down in the said judgments but in the present case the Letters of Credits are conditional, thus, the facts and circumstances differ in the present case, and the defendants should not be debarred to put up their defence and should be allowed to go for trial of the suit against the allegation about the fabrication and manipulation of the letters stated in the plaint.

35. In the judgment of the Apex Court in [United Commercial Bank Vs. Bank of India and Others](#), it is held that where under the letters of credit, description of goods differ from those mentioned in any of the clauses, the paying bank may refuse payment. Relevant portion is extracted below:

...The description of the goods in the relative bill of exchange must be the same description in the letter of credit, that is, the goods themselves must in each be described in identical terms, even though the goods differently described in the two documents are, in fact, the same. It is the description of the goods that is all important and if the description is not identical it is the paying bank's duty to refuse payment.

36. We are of the view that the learned Single Judge wrongly refused the application of the defendants for granting leave to defend as prima facie it is disputed fact whether there exist discrepancies in the documents, the details of which are mentioned in the four letters allegedly written by the defendant No. 1 to the negotiating bank and allegations of fraud and forgery are raised in the plaint by the plaintiff himself, leave to defend could not have been refused to the appellants. The said allegations are still to be looked into and require trial and thereby raises triable issues. Further the defendant No. 1 is a known bank and in case any decree is passed against the said bank after trial, the said bank is in a position to pay the decreed amount, on the other hand in case, no chance is given to the defendants in facts and circumstances of the present case, great injustice would be caused to the defendants to suffer a decree without trial of the suit. Therefore, we feel that the trial in the present circumstances is required and the defendants No. 1 and 2 are entitled to the grant of leave to defend the suit on conditional basis.

37. In our considered view the defendants are entitled to leave to contest the suit subject to furnishing a bank guarantee for 50% of the principle amount i.e. Rs. 43,99,561/- alongwith interest @ 9% p.a. The said amount of 50% has already been deposited by the defendants by way of execution of bank guarantee in view of order dated 30th May, 2003 while admitting the appeal. The said bank guarantee was accepted by learned Registrar General vide order dated 8th March, 2004 which is valid until disposal of the present appeal i.e. FAO (OS) No. 227/2003. Now the said bank guarantee which is already accepted by the Registrar General will continue as

a condition of 50% till the disposal of the suit.

38. We, therefore, set aside the impugned order and allow the application of the defendant Nos. 1 and 2/appellants filed under Order 37 Rule 3(5) of the Code of Civil Procedure, 1908 to grant leave to defend the suit.

39. The defendant Nos. 1 and 2 are granted four weeks" time to file the written statement from the date of this order. The matter shall be put up before the Joint Registrar on 30th January, 2009 for further directions.

40. We make it clear that any observation made herein shall be treated as tentative in nature and shall not constitute any expression of final opinion on the issues involved in Appellant's suit and shall have no bearing on the final merit of case and submissions of the parties in the suit.

41. With these directions, the present appeal is disposed of. No costs.