HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Miscellaneous Appeal No. 1922/2026

M/s Gunjan Fabrics, Shop No. 51, 64, J.k Market, Ground Floor, Batala Makarlah Road, Bankara, Hawrah, Kolkata, West Bengal, Through Its Proprietor Rajkumar Sharma

----Appellant

Versus

M/s Rama Overseas, Proprietor Smt. Surekha Devi W/o Bajranglal Agarwal Authorized Representative Bajranglal Agarwal, Address-15, Rajsarovar, Opposite Victorian Palace, Shobhavon Ki Dhani, Jodhpur, Rajasthan

----Respondent

For Appellant(s)	:	Mr. Rajat Dave
For Respondent(s)	:	Mr. Ayush Goyal

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE SANDEEP SHAH

Judgment

1. Date of conclusion of arguments	**02.07.2026**
2. Date on which judgment was reserved	**02.07.2026**
3. Whether the full judgment or only the operative part is pronounced:	**Full Judgment**
4. Date of pronouncement	**07.07.2026**

Per Dr. Pushpendra Singh Bhati, J:

1. The appellant has instituted the present appeal praying for the following reliefs:-

> *"It is therefore, humbly prayed, that this appeal may kindly be allowed and the impugned Judgment and Decree dated 2.4.2026 passed by the learned Commercial Court No.1 Jodhpur in Civil Original Suit No. 106/2023 (M/s Rama Overseas v/s M/s Gunjan Fabrics) may kindly be set aside and the suit filed by the respondent plaintiff may kindly be dismissed.*

Any other appropriate order or direction which is deemed fit by this Hon'ble Court under the facts and circumstances of the case may kindly be granted in favour of the appellants."

2. For the purpose of adjudication of the present appeal, the facts, shorn of unnecessary details, are that the respondent-plaintiff instituted a suit under the provisions of Order XXXVII of the Code of Civil Procedure, 1908 before the learned Commercial Court No.1, Jodhpur Metro, which came to be registered as Civil Original Suit No.106/2023 (NCV No.107/2023), seeking recovery of an amount of Rs.7,60,950/- together with interest on the basis of certain commercial transactions allegedly entered into between the parties.

2.1. The case set up in the plaint was that the respondent-plaintiff, a proprietorship concern engaged in the wholesale business of cloth, had supplied goods to the appellant-defendant, also stated to be engaged in the business of cloth, under various invoices dated 31.01.2022, 03.02.2022, 05.02.2022 and 06.02.2022. According to the respondent-plaintiff, after adjustment of certain payments and the value of goods allegedly returned by the appellant-defendant, an amount of Rs.7,60,950/- remained outstanding and payable by the appellant-defendant.

2.2. The suit initially came to be decreed ex parte by judgment and decree dated 13.12.2023. Thereafter, on an application preferred by the appellant-defendant under Order IX Rule 13 read with Section 151 CPC, the learned Commercial Court, vide order dated 30.08.2025, set aside the ex parte judgment and decree on payment of costs and restored the suit to its original number.

2.3. Upon restoration of the proceedings, the appellant-defendant filed an application seeking leave to defend under the provisions of Order XXXVII CPC. The said application came to be rejected by the learned Commercial Court vide order dated 19.03.2026. Consequent upon rejection of the application seeking leave to defend, the learned Commercial Court proceeded to decree the suit vide judgment and decree dated 02.04.2026 for a sum of Rs.7,59,590/- together with interest @ 9% per annum.

2.4. Aggrieved thereby, the appellant-defendant has instituted the present appeal under Section 13(1A) of the Commercial Courts Act, 2015 questioning the legality and correctness of the judgment and decree dated 02.04.2026 and the order dated 19.03.2026 rejecting its application seeking leave to defend.

3. Learned counsel appearing on behalf of the appellant vehemently submitted that the impugned order dated 19.03.2026 rejecting the appellant's application seeking leave to defend and the consequential judgment and decree dated 02.04.2026 are wholly unsustainable in the eyes of law and have resulted in grave miscarriage of justice.

3.1. It was submitted that the learned Commercial Court has failed to appreciate that the appellant had raised substantial, bona fide and triable issues which could not have been adjudicated in a summary proceeding under Order XXXVII CPC. The learned Court, instead of examining whether the defence disclosed a fair or reasonable issue requiring trial, proceeded to reject the application solely on the basis of the documents produced by the respondent-plaintiff and thereby deprived the appellant of an opportunity to contest the suit on merits.

3.2. Learned counsel further submitted that the appellant had specifically disputed the very maintainability of the suit under Order XXXVII CPC by asserting that the suit was neither founded upon any negotiable instrument nor upon any written contract executed between the parties and, therefore, the provisions of Order XXXVII CPC were not attracted to the present case.

3.3. It was next contended that the appellant had categorically denied the receipt of the goods allegedly supplied by the respondent. The appellant had specifically pleaded that no goods were ever delivered to it and that the invoices relied upon by the respondent were unilateral documents generated by the respondent itself. Whether any goods were in fact supplied to the appellant and whether the documents relied upon by the respondent correctly reflected the alleged transactions were serious disputed questions of fact requiring adjudication upon appreciation of evidence.

3.4. Learned counsel submitted that the learned Commercial Court committed a manifest error in treating the invoices, e-way bills and alleged GST documents as conclusive proof of liability. The evidentiary value, genuineness and correctness of the said documents were themselves in dispute and could not have been conclusively determined without permitting the parties to lead evidence.

3.5. It was further contended that the appellant had specifically pleaded that the cheques relied upon by the respondent were merely blank signed cheques and had never been issued in favour of the respondent-plaintiff. According to the appellant, the said cheques had been handed over to one Dalpat Jethmal Rawat, a broker, in connection with independent business dealings and the appellant had no knowledge as to how the said cheques came into possession of the respondent. The circumstances in which the respondent obtained possession of the cheques, their purpose and the liability arising therefrom were all disputed questions of fact requiring a full-fledged trial.

3.6. Learned counsel further submitted that there was no direct privity of contract between the appellant and the respondent and that the aforesaid broker, namely, Dalpat Jethmal Rawat, was a necessary and proper party for effective adjudication of the controversy. The non-impleadment of the said person itself demonstrated that the matter involved complex and disputed questions of fact which could not be summarily adjudicated.

3.7. It was also argued that the learned Commercial Court failed to appreciate that the earlier ex parte decree had itself been set aside under Order IX Rule 13 CPC and the proceedings had been restored to afford the appellant an opportunity of contesting the suit. Once the proceedings stood revived, the learned Court ought to have adopted a liberal approach while considering the application seeking leave to defend rather than non-suiting the appellant at the threshold.

3.8. Learned counsel submitted that even assuming that the learned Commercial Court entertained doubts regarding the defence raised by the appellant, the settled position of law required the Court to grant conditional leave to defend instead of rejecting the application altogether.

3.9. In support of the aforesaid submissions, reliance was placed upon the judgment of the Hon'ble Supreme Court in ***B.L. Kashyap and Sons Ltd. v. M/s JMS Steels and Power Corporation & Anr.*****, (2022) 3 SCC 294**, wherein the Hon'ble Supreme Court has held that grant of leave to defend is the normal rule and refusal thereof is an exception; that where the defendant discloses a substantial defence or raises a fair and reasonable triable issue, unconditional leave ordinarily deserves to be granted; and that even in cases where doubts are entertained regarding the genuineness of the defence, the proper course is to grant conditional leave rather than to deny the opportunity of contesting the suit altogether.

3.10. It was, therefore, contended that the defences raised by the appellant, namely, the maintainability of the suit under Order XXXVII CPC, non-receipt of goods, genuineness and purpose of the cheques, absence of privity of contract, involvement of the broker and the evidentiary value of the invoices, e-way bills and GST documents, unmistakably constituted bona fide and substantial triable issues.

4. *Per contra*, learned counsel appearing on behalf of the respondent-plaintiff vehemently opposed the present appeal and

submitted that the impugned order dated 19.03.2026 rejecting the appellant's application seeking leave to defend and the consequential judgment and decree dated 02.04.2026 passed by the learned Commercial Court are perfectly justified and do not warrant any interference by this Hon'ble Court.

4.1. It was submitted that the respondent had instituted the suit under Order XXXVII CPC for recovery of the amount due and payable on account of goods sold and delivered to the appellant. The transactions between the parties were duly supported by GST invoices, e-way bills generated by independent third-party transporters, GST registration records of the appellant and the dishonoured cheques issued by the appellant towards discharge of its liability. Thus, the claim of the respondent was founded upon written contracts and liquidated demand, fully satisfying the requirements of Order XXXVII CPC.

4.2. Learned counsel submitted that the respondent had supplied goods to the appellant under various invoices bearing Nos. 0129, 0135, 0138, 0141 and 0142 for an aggregate amount of ₹8,05,633/-, out of which only a sum of ₹97,403/- was paid and goods worth ₹62,397/- were subsequently returned by the appellant, leaving an outstanding amount of ₹6,45,833/- together with interest thereon. The learned Commercial Court, upon appreciation of the documentary evidence, rightly decreed the suit for ₹7,59,690/- with interest.

4.3. It was further submitted that the appellant itself issued four cheques in favour of the respondent towards payment of the invoices in question. One of the cheques was honoured and realised, whereas the remaining three cheques were dishonoured either for insufficiency of funds or on account of "payment stopped by drawer". The issuance of the cheques itself constitutes a clear acknowledgment of the commercial transactions and outstanding liability of the appellant.

4.4. Learned counsel contended that the plea of non-receipt of goods raised by the appellant is wholly frivolous and self-contradictory. On one hand, the appellant alleges that no goods were ever supplied; on the other hand, in the application seeking leave to defend, the appellant itself admits that the goods were ordered through one Dalpat Jethmal and that cheques were handed over to him. Such contradictory pleas are ex facie indicative of a sham and illusory defence.

4.5. It was further argued that the e-way bills and transport documents clearly demonstrate that the goods were transported and delivered to the appellant's place of business at Nibra, Kolkata, which is also reflected in its GST registration certificate. The transporters who generated the e-way bills are independent third parties having no interest in the litigation and, therefore, the documentary evidence produced by the respondent conclusively establishes the delivery of goods to the appellant.

4.6. Learned counsel further submitted that the appellant's own conduct completely demolishes its defence. The appellant admittedly issued a debit note dated 03.08.2022 and returned certain goods through an independent transporter. Once the appellant itself returned part of the goods, it necessarily follows that the goods had in fact been received by it. Consequently, the plea that no goods were ever supplied is manifestly false and deserves outright rejection.

4.7. It was also submitted that if, as alleged by the appellant, the cheques had been handed over to one Dalpat Jethmal and had been misused, there is no explanation as to why the appellant never initiated any civil or criminal proceedings either against the said broker or against the respondent for the alleged misuse of the cheques. More importantly, the appellant has not questioned the encashment of cheque No. 000012, which was admittedly honoured and realised by the respondent. The complete absence of any action against the alleged misuse of the cheques renders the defence wholly implausible and unbelievable.

4.8. Learned counsel further submitted that to the best of the respondent's knowledge, the appellant had also availed input tax credit on the GST invoices raised by the respondent, thereby acknowledging receipt of the goods and the underlying transactions. The defence sought to be raised is, therefore, nothing but an afterthought intended solely to evade payment of lawful dues.

4.9. Placing reliance upon the judgment of the Hon'ble Supreme Court in ***B.L. Kashyap and Sons Ltd. v. JMS Steels and Power Corporation & Anr.*, (2022) 3 SCC 294**, it was submitted that though leave to defend is ordinarily granted where substantial or bona fide triable issues arise, the Court is equally empowered to refuse leave where the defence is sham, moonshine, frivolous or vexatious. The Hon'ble Supreme Court has categorically held that illusory and implausible defences intended only to delay the proceedings do not merit grant of leave to defend.

4.10. Reliance was also placed upon the judgment of the Hon'ble Supreme Court in ***Rahul S. Shah v. Jinendra Kumar Gandhi & Ors.*, (2021) 6 SCC 418**, wherein the Hon'ble Apex Court deprecated frivolous and dilatory tactics adopted by litigants to obstruct the fruits of a lawful decree and emphasised that courts must discourage such attempts by adopting a strict approach.

4.11. Learned counsel submitted that the appellant never challenged the order dated 19.03.2026 whereby its application seeking leave to defend was rejected and has only challenged the final decree after suffering an adverse judgment. The conduct of the appellant demonstrates a deliberate attempt to prolong the litigation and avoid payment of the decretal amount.

4.12. It was, therefore, contended that the appellant failed to disclose any substantial defence or bona fide triable issue and that the learned Commercial Court rightly concluded that the defence raised was frivolous, vexatious and illusory. Consequently, the rejection of the application seeking leave to defend and the decree passed in favour of the respondent are fully in consonance with the settled principles governing Order XXXVII CPC.

5. Heard learned counsel for the parties, perused the pleadings and material available on record, and considered the judgments relied upon by the respective parties.

6. At the outset, it may be noticed that the learned Commercial Court, while rejecting the appellant's application seeking leave to defend vide order dated 19.03.2026, has recorded that the respondent-plaintiff had placed on record the invoices, e-way bills and other documents evidencing the supply of goods to the appellant and had also specifically pleaded that the appellant had reflected the transactions in its GST returns and had obtained the consequential benefits thereof. The learned Commercial Court further noticed that despite the appellant's bald denial of the transactions, no material whatsoever had been produced to substantiate the plea that the goods had never been received.

7. The subsequent judgment and decree dated 02.04.2026 also indicate that the respondent-plaintiff had produced on record the invoices, e-way bills, GST registration certificate, the cheques issued by the appellant and the non-starter report issued by the District Legal Services Authority. The learned Commercial Court, upon appreciation of the documentary evidence, recorded a categorical finding that the respondent had succeeded in proving the transactions in question and the appellant had failed to raise any defence worthy of acceptance.

8. The principal defence sought to be raised by the appellant is that no goods were ever supplied to it and that the cheques in question were blank cheques handed over to one Dalpat Jethmal Rawat. This Court finds itself unable to accept the said contention.

9. Firstly, the appellant has admittedly not disputed the signatures appearing on the cheques. One of the cheques issued

by the appellant had admittedly been honoured and encashed by the respondent. Secondly, despite alleging misuse of blank cheques, the appellant has neither initiated any criminal proceedings nor any civil action against the said broker or against the respondent-plaintiff. Thirdly, no material has been produced to demonstrate that the e-way bills, invoices and transport documents relied upon by the respondent are fabricated or manipulated.

10. The defence raised by the appellant, therefore, remains a mere assertion unsupported by any contemporaneous material and does not inspire confidence.

11. The Hon'ble Supreme Court in ***B.L. Kashyap and Sons Ltd. v. M/s JMS Steels and Power Corporation & Anr.*, (2022) 3 SCC 294**, while reproducing the principles laid down in ***IDBI Trusteeship Services Ltd. v. Hubtown Ltd.*, (2017) 1 SCC 568**, observed in paragraph **16.2** as under:

> *"16.2. In the case of IDBI Trusteeship (supra), this Court modulated the aforementioned principles and laid down as follows:*
>
> > *"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."* "

11.1. The Hon'ble Supreme Court further held that:

> "*17.2. 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. I**t 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.*"

11. A careful reading of the aforesaid principles makes it abundantly clear that though grant of leave to defend is the ordinary rule, the same is liable to be refused where the defendant fails to disclose any substantial defence or genuine triable issue and the defence sought to be raised is found to be frivolous or vexatious.

12. Applying the aforesaid principles to the facts of the present case, this Court is of the considered opinion that the appellant has failed to disclose any substantial, bona fide or genuine triable

issue warranting grant of leave to defend. On the contrary, the there is sufficient documentary evidence in the form of invoices, e-way bills, GST-related documents and the cheques admittedly issued by the appellant, which adequately establish the commercial transactions between the parties and the outstanding liability of the appellant.

13. In the considered opinion of this Court, the defence sought to be raised by the appellant neither constitutes a substantial or bona fide defence nor discloses any genuine triable issue within the meaning of Order XXXVII CPC. The findings recorded by the learned Commercial Court are founded upon cogent documentary evidence and cannot be said to be perverse, arbitrary or contrary to the settled principles governing summary suits under Order XXXVII CPC.

14. Consequently, this Court finds no infirmity in the order dated 19.03.2026 rejecting the application seeking leave to defend or in the judgment and decree dated 02.04.2026 passed by the learned Commercial Court.

15. In view of the foregoing discussion, the present appeal, being devoid of merit, deserves to be and is hereby ***dismissed***. All pending applications, if any, stand disposed of.

(SANDEEP SHAH),J **(DR.PUSHPENDRA SINGH BHATI),J**

SKant/-