IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 283 OF 2025

Avinash Baburao Kumavat
Age : 44 years, Occ:- Service
R/at:- Monarch Fortune,
Flat No-203, Plot No-19,
Sanjeevni International School,
Sector – 18, Kharghar,
Navi Mumbai – 410210. ...Applicant

Versus

1. Mamta Manik Shahani
through Power of Attorney Holder,
Mr. Brijesh Bhatia
Age:- Adult years, Occ:-
office at:- B-10, Milan Shopping
Centre, M.G. Road,
Ghatkopar (W) - 400086.

2. Monarch Realty Management Services
a partnership Firm registered under
Indian Partnership Act, 1932,
having its office at 419, Raheja
Arcade, Sector 11, CBD Belapur,
Navi Mumbai - 400614.

3. Gopal Amar Thakur
R/at:- Flat No. 701, 7th Floor,
Dheeraj Palace, Near Mira Marriage
Hall, Ulhasnagar, Thane – 421001
Also at 1303, Sonnet, Kesar
Harmony, Plot No.11/12, Sector-6,
Kharghar, Navi Mumbai – 410210.

4. Hasmukh Amar Thakur
Monarch Universal Lifescapes Pvt. Ltd.
R/at:- Flat No.701, 7th Floor,
Dheeraj Palace, Near Mira Marriage
Hall, Ulhasnagar, Thane – 421001

SAINATH SANJAY BODKHE
Digitally signed by SAINATH SANJAY BODKHE
Date: 2026.09.08 18:28:11 +0530

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

Also at 1303, Sonnet, Kesar
Harmony, Plot No.11/12, Sector-6,
Kharghar, Navi Mumbai – 410210.

5. Anand Thakur
R/at:- Survey No. 113/0,
Village-Akurli, Near Panvel Matheran
Road, Panvel, Dist. Raigad-410206.

6. Ashok Nariyani
R/at:-1201, Flavia, Kesar Harmony,
Plot – 11/12, Sector-6, Kharghar,
Navi Mumbai – 410210.

7. Roshan Sheth
Monarch Universal Lifescapes Pvt. Ltd.
R/at:- 1201, Flavia, Kesar Harmony,
Plot No-11/12, Sector-6, Kharghar,
Navi Mumbai – 410210.
Also at 01 Kohinoor Arcade,
Near Daule Hospital, Savedi,
Ahmednagar – 414001.

8. Ramnivas Janardan Agarwal
R/at:- Survey No. 113/0,
Village – Akurli, Near Panvel
Matheran Road, Panvel,
Dist. Raigad – 410206.

9. Sachin Ramnivas Agarwal
R/at:- Survey No. 113/0,
Village – Akurli, Near Panvel
Matheran Road, Panvel,
Dist. Raigad – 410206.

10. Monarch Greenscapes
a partnership Firm registered
under Indian Partnership Act, 1932
having its office at Survey No.113/0,
Village-Akurli, Near Panvel Matheran
Road, Panvel, Dist. Raigad-410206.
Also at Village No.1, Monarch Empire,
Mayuresh Chambers, Plot No.60,

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

Sector – 11, CBD Belapur,
Navi Mumbai – 400 614. ...Respondents

Ms. Sayali Gite, a/w Mr. Rajindar Singh Bhatti, for the Applicant.

Mr. Kaustubh Thipsay, for the Respondent No.1.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 14th JULY 2026
PRONOUNCED ON : 08th SEPTEMBER 2026

JUDGMENT:

1. This Civil Revision Application is directed against an order dated 18th February, 2025 passed by the learned Civil Judge, Belapur in Summary Suit No.161/2023, whereby the learned Civil Judge rejected an application preferred by the Applicant – Defendant No.6, seeking leave to defend the summary suit.

2. Shorn of superfluities, the background facts, can be stated as under :-

2.1 Monarch Realty Management Services (Defendant No.1) and Monarch Greenscapes (Defendant No.10), are the registered partnership firms. The Respondent No.1 – plaintiff had known

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

the Defendant Nos. 2 to 9; the partners of Defendant Nos.1 and 2, through common friends.

2.2 The Defendant Nos.2 to 9 allegedly made representations to the plaintiff that, the investment in the ventures of Monarch Group of Companies, including Defendant No.1 was not only safe but also yielded good and viable returns.

2.3 Pursuant to the representations and the confidence which the defendants made the plaintiff to repose in them, the plaintiff claimed to have invested a sum of USD 500,000/- (Five Hundred Thousand Dollars) in Defendant No.1 – Firm. A Memorandum of Understanding was executed between the plaintiff and Defendant No.1 on 10th February, 2014 incorporating the terms of the contract between the parties. The MoU recorded, *inter alia*, that 11 flats in the then ongoing residential project of Monarch Greenscapes (D-10) were offered as security for the due repayment of the amount and the interest thereon.

2.4 The plaintiff further claimed that, she was induced to invest a further sum of Rs.2,02,50,000/- (Rupees Two Crores Two Lakhs Fifty Thousand) in Defendant No.1 – Firm, and the said amount was offered by way of security for the overdraft

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

and credit facilities in the savings bank account of the Defendant No.6 – Applicant herein.

2.5 A Memorandum of Understanding dated 15th April, 2014 was executed to evidence the said transaction. Monarch Greenscapes (D-10) offered 8 flats by way of security for the due repayment of the principal amount and interest thereon.

2.6 In the third tranche of investment, the plaintiff claimed to have advanced a sum of Rs.90,90,000/- (Ninety Lakhs Ninety Thousand) to the Defendant No.1. The third investment was also evidenced by a MoU dated 25th June, 2014. The said credit was also made available by way of an additional overdraft facility in the savings account of the Applicant – Defendant No.6. The plaintiff claimed that, the aforesaid financial facility was also secured by the security interest created in the three flats in the project - Monarch Greenscapes (D-10).

2.7 The fourth investment was in the sum of SGD 700,000/- equivalent to Rs.3,36,00,000/- (Rupees Three Crores Thirty Six Lakhs) to be repaid in INR within 20 days from the date of execution of the MoU dated 27th June, 2014 alongwith interest at the rate of 20% p.a. The fourth tranche of advance was also secured by a post-dated cheque drawn in the sum of

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

Rs.3,36,00,000/- (Rupees Three Crores Thirty Six Lakhs) and 12 flats in the project, “Monarch Greenscapes” (D-10).

2.8 The plaintiff asserted that, barring payment of interest component qua the first investment, no amount was repaid by the Defendant No.1 in accordance with the terms of the contract evidenced by the Memorandums of Understanding. Eventually, at the request of the defendants, the cheque drawn for Rs. 3,36,00,000/- (Rupees Three Crores Thirty Six Lakhs) was presented for the encashment. However, the cheque was returned unencashed on 10th January, 2018, with the remark “Account closed Today”.

2.9 As the defendants failed and neglected to pay the due amount despite service of the legal notice, the plaintiff was constrained to institute the suit for recovery of the sum of Rs.23,09,54,066/- (Rupees Twenty Three Crore Nine Lakhs Fifty Four Thousand and Sixty Six), comprising of the principal amount of Rs.9,43,50,000/- (Rupees Nine Crores Forty Three Lakhs Fifty Thousand) and the interest of Rs.13,66,04,066/- (Rupees Thirteen Crores Sixty Six Lakhs Four Thousand and Sixty Six), which had accrued thereon, alongwith further

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

interest on the principal amount at the rate of 24% p.a., from the date of institution of the suit till realization.

2.10 The Defendant No.6 appeared and sought leave to defend the suit by filing an application (Exh. 32). The Defendant No.6, *inter alia*, contended that, all the transactions were between the plaintiff and the Defendant No.1 – Firm. The Defendant No.6 was not a party to any of the MoU's which allegedly evidence the transaction between the plaintiff and Defendant No.1. Thus, there was no privity of contract between the plaintiff and Defendant No.6. Neither was Defendant No.6 the executant of any of the instruments, nor was Defendant No.6 a signatory to any of the cheques, purportedly drawn by the Defendant No.1. The Defendant No.6 was not liable to repay any amount to the plaintiff and, therefore, the Defendant No.6 deserved an unconditional leave to defend the suit.

2.11 The plaintiff opposed the grant of leave to defend the suit. It was, *inter alia*, contended that, the Defendant No.6 was a partner of Defendant No.1 – Firm and the facility of overdraft was made available in the account of the Defendant No.6 on the basis of the security furnished by the plaintiff. As the

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

Defendant No.6 has never controverted his position as a partner of the Defendant No.1 – Firm, the defence based on the purported absence of privity of contract between the plaintiff and Defendant No.6, did not warrant grant of leave to defend the suit.

2.12 By the impugned order, the learned Civil Judge was persuaded to reject the application for leave to defend, opining *inter alia* that, there was no specific denial of the contentions of the plaintiff in the affidavit-in-reply that, the Defendant No.6 was a partner of Defendant No.1 – Firm. Since the commercial suit was based on documents, in the view of the learned Civil Judge, no case for grant of leave to defend was made out.

2.13 Being aggrieved, the Applicant/Defendant No.6 has preferred this application.

3. I have heard Ms. Sayali Gite, the learned Counsel for the Applicant-Defendant No.6, and Mr. Kaustubh Thipsay, the learned Counsel for the Respondent No.1 – plaintiff, at some length. The learned Counsel for the parties took the Court through the pleadings and the material on record.

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

4. Ms. Sayali Gite, the learned Counsel for the Applicant, would submit that, the learned Civil Judge rejected the application for leave to defend the summary suit on completely untenable grounds. The learned Civil Judge did not keep in view the principles which govern the grant of leave to defend a summary suit. In the process, the learned Civil Judge constructed a case for the plaintiff which was not at all pleaded by the plaintiff. There was not an iota of material to show that, Defendant No.6 was a partner of Defendant No.1 – Firm, and, in fact, that was not the pleaded case of the plaintiff. Yet, the learned Civil Judge fastened the liability on the Defendant No.6 by presuming that, the Defendant No.6 was a partner of Defendant No.1 – Firm.

5. Mr. Kaustubh Thipsay, the learned Counsel for the Respondent No.1 – plaintiff made a valiant attempt to support the impugned order. It was submitted that, the entire nature of the transaction was required to be appreciated to correctly understand the relationship between the Defendant No.1 and Defendant No.6. The claim of the plaintiff that, the credit was made available to the Defendant No.1 in the form of an overdraft facility in the then newly opened account of the Defendant No.6, finds support in the documents on record.

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

The learned Civil Judge was, thus, justified in holding that, the Defendant No.6 was indeed a partner of Defendant No.1 - Firm.

6. As a second limb of the submission, Mr. Thipsay would urge that, even when a person holds himself out as a partner of a firm and induces the persons dealing with the firm to alter their positions, such person cannot be permitted to urge that, there was no privity of contract. To lend support to this submission, Mr. Thipsay placed reliance on a judgment of the Punjab and Haryana High Court in the case of ***Sham Sunder Vs. Hari Dev Bansal***[1], and another judgment of a learned Single Judge of the Delhi High Court in the case of ***Hindustan Unilever Ltd. Vs. Sethi Agencies & ors.***[2], wherein the inferences that emanate when a person holds himself out as a partner of a firm were expounded.

7. I have given careful consideration to the submissions canvassed across the bar. To begin with, it is necessary to note, the pleadings as to the purported jural relationship between the Defendant No.1 and Defendant No.6. In the plaint, the plaintiff asserted that the Defendant Nos. 1 and 10 are the partnership firms registered under the Indian Partnership Act,

---

1 1999 SCC OnLine P&H 189

2 2022 SCC OnLine Del 3131

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

1932. A reference is made to various transactions between the plaintiff and Defendant No.1 – Firm. Purportedly, Monarch Greenscapes (D-10) had offered security of the flats towards repayment of the amount allegedly advanced by the plaintiff to Defendant No.1.

8. It is pertinent to note that, in the prayer clause, the plaintiff sought a decree in the sum of Rs.23,09,54,066/- (Rupees Twenty Three Crores Nine Lakhs Fifty Four Thousand and Sixty Six) against the Defendant No.1 – Firm only. *Ex facie*, there are no averments in the plaint to the effect that, the Defendant Nos.2 to 9 are the partners of either Defendant No. 1 or the Defendant No.10. The pleadings as regards the jural relationship between the Defendant Nos.1 and 10, on the one part, and Defendant Nos.2 to 9, on the other part, are blissfully vague.

9. Secondly, from the tenor of the plaint, it becomes clear that, the plaintiff had asserted that the MoUs to evidence the transaction were executed by and between the plaintiff and Defendant No1, only. It is not the case of the plaintiff that, the Defendant No. 6 is the executant of any of the MoUs. As noted

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

above, the decree is sought against the Defendant No.1- Firm, only.

10. In the aforesaid context, the capacity in which the Defendant No.6 has been impleaded in the suit assumes critical salience. In Paragraph No. 14 of the plaint, there is a clear and categorical assertion that, by furnishing security in the sum of Rs.2,02,50,000/- (Rupees Two Crores Two Lakhs Fifty Thousand), the overdraft and credit limit in the savings account of the Defendant No.6, was facilitated. In the said paragraph, the Defendant No.6 has been described as a "*business partner/friend of defendants and their partners*."

11. Two things become abundantly clear. One, a statement in the plaint is conspicuous by its absence that Defendant No.6 was a partner of the Defendant No.1 – Firm. Two, the Defendant No.6 was stated to be a friend of a business partner/friend of Defendant Nos.1 to 10 and their partners.

12. Indeed, it appears that, in the affidavit-in-reply filed in opposition to the application seeking leave to defend, the plaintiff made an endeavour to improve upon her version and assert that, the Defendant No.6 was a partner of Defendant No.1 – Firm. The learned Civil Judge found that, the said

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

assertion of the plaintiff went untraversed as it was not controverted by filing an affidavit-in-rejoinder and, thus, it amounted to an admission that, Defendant No.6 was a partner of Defendant No.1 – Firm.

13. Clearly, the learned Civil Judge misdirected herself in arriving at a finding that, the Defendant No.6 had admitted that, he was a partner of Defendant No.1. The learned Civil Judge completely lost sight of the fact that, it was not the case of the plaintiff that, the Defendant No.6 was ever a partner of Defendant No.1 – Firm. On the contrary, a distinct capacity was sought to be attributed to the Defendant No.6. The learned Civil Judge, thus, could not have readily acceded to the submission on behalf of the plaintiff that, the Defendant No.6 was a partner of the firm in the absence of such pleadings.

14. Reliance by Mr. Thipsay on the decisions in the cases of ***Sham Sunder (supra)*** and ***Hindustan Unilever Ltd. (supra)***, is wholly misplaced as the plaint lacks averments to demonstrate that, Defendant No.6 was either a partner of the firm or that Defendant No.6, by his acts or conduct, held himself out as a partner of the Defendant No.1 – Firm. In the absence thereof, the theory of Defendant No.6 being a person who held himself

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

out as a partner of the firm, does not merit countenance, especially at the stage of consideration on the aspect of grant of leave to defend the suit.

15. The legal position as regards the grant of leave to defend a summary suit is well crystallised. If the defendant raises a substantial defence, leave to defend is required to be granted unconditionally. Where the defendant raises a triable issue in the sense that the defence is fair and reasonable, ordinarily, the defendant is entitled to unconditional leave to defend the suit. However, where the defendant raises a triable issue, but, the Court entertains doubt about the bonafide of the said defence or such defence though plausible, yet, appears to be improbable to the Court, conditional leave to defend the suit can be granted. The conditions may relate to time or mode of trial or an order for deposit of the amount or security for the claim amount. It is only in those cases where the Court finds that defence raised by the defendant is sham and bogus, the Court can decline to grant leave to defend the suit.

16. In the case of ***Raj Duggal Vs. Ramesh Kumar Bansal***[3], the law was succinctly enunciated as under :-

---

3 1991 Supp (1) SCC 191

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

> "**3.** Leave is declined where the court is of the opinion that the grant of leave would merely enable the defendant. to prolong the litigation by raising untenable and frivolous defences. 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 that leave 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 was a bona fide defence, he ought to have leave. Summary judgments under Order 37 should not be granted where serious conflict as to 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."

17. In the case of ***IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd.***[4], the Supreme Court culled out the propositions which govern the exercise of discretion as under:-

> "**17.** Accordingly, the principles stated in paragraph 8 of Mechelec's case will now stand superseded, given the

4 (2017) 1 SCC 568

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

amendment of O.XXXVII R.3, and the binding decision of four judges in Milkhiram's case, 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,

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

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."

18. The aforesaid tests formulated by Supreme Court were reiterated by the Supreme Court in the case of ***B. L. Kashyap and Sons Ltd. vs. JMS Steels & Power Corporation & anr.***[5], as under :-

"**33.1** As noticed, if the defendant satisfies the Court that he has substantial defence, i.e., a defence which is likely to succeed, he is entitled to unconditional leave to defend. In the second eventuality, where the defendant raises triable issues indicating a fair or bonafide or reasonable defence, albeit not a positively good defence, he would be ordinarily entitled to unconditional leave to defend. In the third eventuality, where the defendant raises triable issues, but it remains doubtful if the

5 (2022) 3 SCC 294

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

defendant is raising the same in good faith or about genuineness of the issues, the Trial Court is expected to balance the requirements of expeditious disposal of commercial causes on one hand and of not shutting out triable issues by unduly severe orders on the other. Therefore, the Trial Court may impose conditions both as to time or mode of trial as well as payment into the Court or furnishing security. In the fourth eventuality, where the proposed defence appear to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also of payment into the Court or furnishing security or both, which may extend to the entire principal sum together with just and requisite interest.

33.2 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. It 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

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

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.

33.3 Therefore, while dealing with an application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the rule or that the leave to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues, with the defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave. It gets perforce reiterated that even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated above could be imposed while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the defendant fails to show any genuine triable issue and the Court finds the defence to be frivolous or vexatious".

19. In the light of the aforesaid position in law, if the facts of the case at hand are appraised, the Defendant No.6 had succeeded in demonstrating that, he had a substantial defence in the sense that, there was no credible material to show the jural relationship between the Defendant No.1 and Defendant No.6, and it was not the pleaded case of the plaintiff that,

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

Defendant No. 6 was the partner of Defendant No.1, and, at any rate, the Defendant No.6 had raised a triable issue of the absence of privity of contract between the plaintiff and Defendant No.6 or the liability of the Defendant No.6 to discharge the debt purportedly incurred by Defendant No.1. Under no circumstances could it be inferred that, the defence raised by the Defendant No.6 was, *ex facie*, sham, frivolous or vexatious so as to deny the leave to defend.

20. In the backdrop of the aforesaid facts, which appear to be rather incontrovertible and stare in the face, the learned Civil Judge committed a manifest error in law in declining to grant leave to defend the suit. The learned Civil Judge did not keep in view the well recognized principles which govern the grant of leave to defend a summary suit.

21. Resultantly, the impugned order cannot be sustained and deserves to be quashed and set aside. Hence, the following order :-

: : O R D E R : :

(i) The Civil Revision Application stands allowed.

(ii) The impugned order dated 18th February, 2025,

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46

stands quashed and set aside.

(iii) The Applicant/Defendant No.6 is granted an unconditional leave to defend the suit.

(iv) The Defendant No.6 shall file his written statement within a period of 30 days from today.

(v) No costs.

[N. J. JAMADAR, J.]

Uploaded on - 08/09/2026 Downloaded on - 11/09/2026 08:44:46