IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 5114 OF 2026
WITH
INTERIM APPLICATION NO.3304 OF 2026
IN
FIRST APPEAL NO. 463 OF 2026

Mr. Abhik Bhanu
(Sole Proprietor Of Sarayu Vision) ....Applicant/Appellant
V/s
Vijay Kumar Trivedi And Anr. ....Respondents

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Mr. Amandeep Singh a/w. Mr. Abhijit Ranjan, Ms. Rithika Yerra i/b Chittaranjan, Shah Kay Legal & Associates LLP for Applicant/Appellant.
Mr. Vijay Kumar Trivedi and Ms. Sapna Trivedi Respondents Nos.1 & 2 party-in-person, present.

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CORAM : M.M. SATHAYE, J.

DATE : 31st AUGUST, 2026

P.C. :

1. Taken up as an alternate Bench, due to order dated 21.08.2026 passed by Justice Ms. Aarti A. Sathe stating ‘not before me’.

2. Heard learned counsel for the parties. Perused the record.

3. The Applicant/Appellant is the Defendant in Summary Suit No. 617 of 2023, which is filed by Respondents/Plaintiffs for recovery of Rs.60,52,500/- with future interest @ 6% per month from date of suit. The summary suit is based on a Memorandum of Understanding dated 04.06.2021 between the parties (‘the said MoU’ for short), under which, the Respondents invested Rs.35,00,000/- with the

Appellant for production of a film and post dated cheque was issued by the Appellant.

4. IA/3304/2026 is filed seeking interim stay to the impugned Judgment and Decree dated 26.03.2026 passed by City Civil Court at Dindoshi (Borivali Division) in Summary Suit No. 617 of 2023. IA/5114/2026 is filed seeking stay to Order dated 03.07.2026 passed below Exhibit No. 8 in Execution Application No. 39 of 2026. It is informed that the Executing Court has passed an order below Exhibit No. 8 attaching the Appellant's property.

5. By order dated 08.09.2025, after hearing both sides, the learned Trial Judge granted leave to defend to the present Appellant on a condition that he deposits a sum of Rs.35,00,000/- in the Court within a period of 6 weeks. The Appellant challenged this order by filing Appeal from Order No.563 of 2025. Notwithstanding whether such appeal was maintainable or not, it is not disputed that before this appeal could be taken up for hearing, the summary suit itself was finally heard and decreed. It is also not disputed that the conditional order for leave to defend was not complied in as much as the Appellant did not deposit the amount of Rs.35,00,000/-.

6. Learned counsel for the Appellant Mr. Singh tendered list of dates and events (pages 1 to 152) and additional compilation (pages 1 to 902). He pressed the applications urgently because the execution is posted on 08.09.2026 for orders post attachment of property.

7. Mr. Singh submitted that if the concerned Clause No. 4 of the said MoU is seen, it is a case of contingent contract and it cannot

amount to debt. He submitted that the Respondents have invested the amount which are agreed to be returned in a contingent manner and those contingencies have not reached. He submitted that since the suit has been decreed even before the order of conditional leave can be tested in appeal, the Appellant is well within his rights to contend that the 'unconditional leave' ought to have been granted to defend the suit. He submitted that his residential house is attached for execution. Relying on Full Bench Judgment of this Court in **Jyotsna K. Valia and Ors. Vs. T.S Parekh and Ors. 2007(4) ALL MR 718**, it is submitted that the essential requirements of a debt are not met in the present case and something which is merely accruing and contingent, is not a debt. He further relied on **Sanjay Mahadeoprasad Trivedi and Ors. Vs. Housing Development Finance Corporation Bank Limited 2026(1) MhLJ 443** in support of his case that once triable issue is raised, unconditional leave is necessary to be granted. On instructions, he submitted that Appellant is ready to pay Rs.3,00,000/- to the Respondents.

8. On the other hand, Respondent No. 1 Mr. Vijaykumar Trivedi, who appeared in person for both himself and Respondent Nos. 2 (who is also present in the Court) opposed grant of any relief in favour of the Appellant. He tendered affidavit in reply dated 15.07.2026 to First Appeal (pages 1 to 145) and affidavit in reply dated 15.07.2026 to IA/5114/2026 (pages 1 to 18).

9. Respondent No. 1 invited the Court's attention to exchange of email communication dated 22.07.2022 between the parties contending that the Appellant was not even ready to issue a fresh

cheque because the post-dated cheque (PDC) issued along with the MoU was limited by its validity period. He further invited the Court's attention to page nos. 185 to 189 from the documents filed by the Appellants viz. his reply dated 28.07.2025 filed to the leave application, contending that he had placed on record material in support of his contention that a notice is published by UP Government on its website that subsidy has been sanctioned in favour of the Appellant. He further invited the Court's attention to page 249 to 251 from the documents filed by the Appellants, contending that the rights of the film have been dealt with and material in support thereof is produced to contend that the 'music release' as well as 'release of the movie' has been advertised showing that the movie is to be released oversea by World Cinema Partners. He contended that the impugned decree, being money decree, cannot be stayed unless the same is secured by either deposit of money in the Court or payment to the Respondents.

10. I have considered the rival submissions and perused the record including above material pointed out.

11. At the outset, it is necessary to note that by impugned decree the Appellant is directed to pay Rs.35,00,000/- along with interest @ 9% per annum from date of filing of suit till realisation. As on today, roughly the amount comes to over Rs.44,00,000/-. Nothing is brought to the notice of the Court that any amount has been deposited by the Appellant either in the Court or paid to the Respondents.

12. Since the application for leave to defend/file written statement was heard by the Court and was decided on merits, directing the Appellant to deposit Rs.35,00,000/- in the Court, which was not complied with, and since the decree is passed before challenge to the said order can be heard, the said order has merged in the impugned decree. Therefore, any argument about whether the Appellant is entitled to unconditional leave or otherwise, is a matter of final disposal and therefore, cannot be taken up immediately at the stage of interim relief.

13. The effect of prayers made in the above applications, in essence, is to stay the money decree which is standing in favour of the Respondents. Whether the MoU and the facts and circumstances surrounding the MoU, as existed between the parties, amounts to a 'contingency' and therefore 'not a debt' as argued by the Appellant, is a matter that will be decided at the time of final hearing. Be that as it may. The Court has to consider the challenge in *prima facie*.

14. From the documents placed on record including material showing music release of the movie by Red Ribbon Musik and advertisement about its release on ZEE5 and World Cinema Partner, it *prima facie* appears that movie rights have been dealt with. Hence it can not be said, at least *prima facie,* that condition in Clause 4B has not occurred. Similarly considering the material placed on record about approval of Rs.7,45,941/- as subsidy from UP Government post audit scrutiny (page 228), which was also brought to the notice of the Trial Court by filing reply, it *prima facie* appears that subsidy is released. Whether Appellant accepted it or disputed it is a different

matter. Clause 4A does not mention any specific amount of subsidy. Hence, it also cannot be said, at least *prima facie,* that condition in Clause 4A has not occurred. In that view of the matter, at least *prima facie,* the MoU terms cannot be said to be 'mere contingency'. In the teeth of such factual *prima facie* material, the judgments relied upon by the Appellant will not help him.

15. There is merit in the submission of the Respondents that PDC given under the MoU (with condition that it cannot be presented without the Appellant's written consent) cannot be considered as weighing in favour of the Appellant. Perusal of the said PDC dated 01.06.2022 drawn on Allahabad Bank indicates that on the backside of the said cheque, the Appellant had written that 'this PDC cannot be presented without Appellant's written consent'. This endorsement, *prima facie,* would only be applicable till the said cheque is valid, which is admittedly limited for 3 months from 01.06.2022. In that view of the matter, the Respondents were justified to ask for fresh PDC which is borne out from the exchange of emails. Therefore, *prima facie* even Clause 4D of the said MoU can only be taken as for limited period expiring within 3 months from date of cheque between the parties.

16. While passing the order on application for leave to defend, which now stands merged with the impugned decree, the Trial Court has observed that the present case falls in the second category, in as much as while triable issue exists, the Appellant's *bona fides* are in doubt. Taking note of the fact that the Plaintiffs had advanced Rs.35,00,000/- by bank transfer and PDC was issued under MoU

which got dishonored, the unconditional leave was refused and condition was imposed, which is admittedly not complied with by the Appellant.

17. In the aforesaid facts and circumstances and for reasons indicated above, in my view, **the impugned decree cannot be stayed unless** (i) the Appellant deposits in the concerned Executing Court either the entire amount with interest under the impugned decree OR (ii) the Appellant directly pays to the Respondents the principal amount under impugned decree i.e. Rs.35,00,000/-, both within a period of 6 weeks from today.

18. **Hence, both the applications are disposed of** by directing that subject to either of above conditions being complied by the Appellant, the impugned decree shall remain stayed.

19. Needless to mention that if the conditions are not met, both the applications shall stand rejected without further reference to the Court.

20. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)