

(1967) 03 GUJ CK 0025

In the Gujarat High Court

Case No : Civil Revision Application No. 79 of 1967

Navinchandra Babulal Bhavsar

APPELLANT

Vs

Bachubhai Dhanabhai Shah

RESPONDENT

Date of Decision : 14-03-1967

Acts Referred:

Ahmedabad City Courts Act, 1961 — Section 17
Ahmedabad Small Causes Court Rules, 1961 — Rule 1(2), 122, 142, 144, 145
Civil Procedure Code, 1908 (CPC) — Order 37 Rule 2, Order 37 Rule 3 , 115, 121, 122
Constitution of India, 1950 — Article 14, 19, 226, 227, 32
Presidency Small Cause Courts Act, 1882 — Section 9

Citation : AIR 1969 Guj 124 : (1968) GLR 409

Hon'ble Judges : P.N. Bhagwati, J;N.K. Vakil, J

Bench : Division Bench

Advocate : K.H. Kaji, Acting Advocate General, Niranjana Mehta, for J.M. Patel, for the Appellant; K.A. Daboo, for N.J. Mody, for the Respondent

Judgement

Vakil, J.—This Civil Revision Application is made u/s 113 of the CPC challenging the following order made by the Chief Judge of the Ahmedabad Small Cause Court in summary suit No. 3018 of 1966:--

"On defendant depositing Rs. 1000/- in court within 6 weeks, leave to defend is granted. On such deposit defendant to file his written statement within 3 weeks thereafter."

The opponent had filed the said suit against the applicant stating that the applicant had taken Rs. 1000/- from him as loan which amount was advanced without interest as they were friends and despite demands the defendant had not returned the loan. The opponent plaintiff relied on a writing passed by the applicant. The applicant had appeared before the Court in answer to the summons for judgment and filed his affidavit, denying his liability to pay the amount on the ground that the loan was not given to him but he believed that it was given to the person who had attested the document. The applicant has, however, not denied his signature on the document. At the hearing of the summons for

judgment the impugned order was made under Rule 39 of the Ahmedabad Small Cause Court Rules framed by the High Court of Gujarat read with Rule 3 of Order 37 of the Civil Procedure Code. By an amendment application which we have allowed, the applicant has augmented some of the grounds originally taken in the revision application. Though a number of grounds were raised, the said order is now challenged before us only on the following grounds and the others have not been pressed:--

(1) By compelling the defendant to show a good or genuine defence to the suit before granting leave to defend, the procedure stifles or paralyses the defendant completely in his defence and renders it illusory and thus constitutes an unreasonable restriction on his right to hold and dispose of property under Article 19 of the Constitution of India.

(2) Even when the Court has a doubt as to the genuineness of the defence, the procedure allows the Court to impose conditions and thus deprives an impecunious defendant of his valuable right to defend before he is deprived of his property. Therefore, the procedure constitutes unreasonable restriction on his right to hold and dispose of the property under Article 19.

(3) Unlike the English practice, the summary procedure does not provide a right to appeal from an order refusing or granting conditional leave.

(4) Unlike the English practice, the summary procedure does not require the Court to give any reasons for such order.

(5) The summary procedure is heavily weighed in favour of the plaintiff as against the defendant, even though they are similarly situated with respect to the object of the rule and thus contravenes the fundamental right guaranteed by Article 14.

(6) The procedure allows the plaintiff throughout the whole of the trial all the advantages of a fair trial irrespective of the fact whether his case is genuine, fair, false, good or dishonest, but drives the defendant out of Court, if he fails to show that he has a good or genuine defence before the trial.

2. Before we go to consider these contentions, it will be expedient to refer, in short, to some of the provisions of the CPC and the Rules which provide for the summary procedure. The first part of the Civil Procedure Code consists of sections which constitutes the main body of the Code and the second part consists of rules put in the First Schedule which provide for the mode and method in which the main provisions of the Code are to be applied in practice. The object of the CPC is to lay down the law relating to the procedure of the Courts of Civil Judicature and it envelopes within its ambit a variety of causes and civil litigation. In some causes and litigation, looking to their nature, the need of urgency in their disposal and realisation of decretal amount, and which causes are inherently less complex than others being claims of liquidated amounts only, the Legislature has thought fit to provide a different treatment

while laying down the rules of procedure. Part X of the main body of the CPC deals with rules. Section 121 provides that the rules in the First Schedule shall have effect, as if enacted in the body of the Code until annulled or altered in accordance with the provisions of this part Rule 122 gives power to certain High Court to make rules and lays down that "High Courts not being the Courts of a Judicial Commissioner may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule." Section 128 lays down that the rules so made shall not be inconsistent with the provisions of the body of the Code but subject thereto, may provide for matters relating to the procedure of Civil Courts including the summary procedure. Turning to the second part of the Code which consists of various orders and rules made thereunder, we may only refer to Order XXXVII which deals with summary procedure and the rules thereunder which have a bearing on the matter on hand. Rule 1 of Order XXXVII inter alia provides that the Order shall apply only to (i) the High Courts of Judicature at Fort William, Madras and Bombay and (ii) any District Court or other Court specially empowered in this behalf by the State Government. Originally rule 2 made the summary procedure applicable to suits upon bills of exchange, hundies or promissory-notes only and the defendant was not entitled either to appear or defend unless he applied for leave to appear and defend within 10 days of the service of summons and such leave was granted. Rule 3 is as follows:--

"3. (1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit."

Rule 7 lays down that "Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner." in 1936, the High Court of Bombay, in exercise of the powers vested in it u/s 122 read with Section 128(f) of the Civil Procedure Code, framed rules substituting Rules 1 and 2 of Order XXXVII and in 1940 substituted its own rule in place of the original Rule 3. We need not enter into the details thereof here. On the reorganisation of the composite State of Bombay, the two States of Maharashtra and Gujarat came into existence in 1960 and with it came into existence the High Court of Gujarat. On May 15, 1961, the State of Gujarat passed the Ahmedabad City Courts Act, 1961, providing for the constitution of the Ahmedabad Small Cause Courts, which came into existence on November 4, 1961. On the same day the City Civil Court also came into existence having been constituted under the said Act. By Section 17 of the Ahmedabad City Courts Act, 1961, the Presidency Small Cause Courts Act, 1882 (Act 15 of 1882), was

extended to and made applicable to the city of Ahmedabad from November 4, 1961. u/s 9 of the Presidency Small Cause Courts Act, 1882, the High Court is empowered, inter alia, from time to time by rules having the force of law to prescribe the procedure and practice to be observed by the Small Cause Court either in supersession of or in addition to any provisions which were prescribed with respect to the procedure or practice of the Small Cause Court on or before the 31st day of December 1894, in or under the Act or any other enactment for the time being in force. It has also been empowered to cancel or vary any such rule or rules. The rest of the section need not be referred to.

3. By virtue of this authority under the said Section 9, the High Court of Gujarat prescribed rules regarding the procedure to be followed and the practice to be observed by the Ahmedabad Small Cause Court Sub-rule (2) of Rule 1 of the Rules so prescribed, is as follows:--

"(2) The portions of the CPC Act V of 1908, as modified upto 4th November 1961 in its application to the State of Gujarat specified in the last column of the schedule hereto annexed shall, subject to the additions, alterations and modifications specified in the 2nd column of such schedule, extend and shall be applied to the Small Cause Court and the procedure prescribed thereby shall be the procedure followed hi the Court in all suits cognizable by it except where such procedure is inconsistent with the procedure prescribed by any specific provisions of the Presidency Small Came Courts Act, 1882, or with these rules." The Schedule provided by the said rules includes the application of the summary procedure of Order XXXVII, Civil Procedure Code, but has deleted Rule 1 and has substituted for the original Rule 2, the following rule :--

"2(1) All suits upon bills of exchange, hundis or promissory notes and all suits in which the plaintiff seeks only to recover a debt or a liquidated demand in money payable by the defendant with or without interest, arising on contract express or implied or an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of debt other than a penalty, or on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only, may, in case the plaintiff desires to proceed hereunder be Instituted by presenting a plaint which shall be instituted as a "Summary Suit" and which shall contain an averment that the plaintiff is suing under the summary procedure under Order XXXVII of the Code of Civil Procedure.

(2) The writ of summons in a suit instituted under Sub-rule (1) above shall be in form No. 2, The plaintiff shall together with the writ of summons serve on the defendant a copy of the plaint and exhibits thereto, and the defendant may at any tune within ten days of such service enter an appearance. The defendant may enter an appearance either in person or by an advocate. In either case an address for service shall be given in the memorandum of appearance and, unless otherwise ordered, all summonses, notices, or other judicial process required to be served on the defendant shall be deemed to have been duly served on him if left at his address for service. On the day of entering appearance, notice of the

appearance shall be given to the plaintiffs Advocate (or if the plaintiff sues in person to the plaintiff himself) either by notice delivery at or sent by prepaid letter directed to, the address of the plaintiffs Advocate or of the plaintiff, as the case may be.

(3) In any suit under this Rule the defendant shall not defend the suit unless he enters an appearance and obtains leave from a judge as hereinafter provided so to defend; and in default of his entering an appearance and of his obtaining such leave to defend, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons together with interest at the rates specified (if any) to the date of the decree, and such sum for costs as may be prescribed unless the plaintiff claims more than such sum, in which case the costs shall be ascertained in the ordinary way and such decree may be executed forthwith."

Again, in the body of the rules under the heading "Summary Procedure", the High Court has provided rules Nos. 39 to 44. As we are concerned particularly with the validity of Rule 39, it will be convenient to reproduce it here:--

"39. (1) In a suit filed under Order XXXVII of the Code of Civil Procedure, if the defendant enters an appearance or files a Vakalatnama, the plaintiff shall, on affidavit made by himself, or by any other person who can swear, to the facts of his own personal knowledge verifying the cause of action and the amount claimed, and stating that in his belief there is no defence to the action, apply by summons for judgment returnable not less than ten clear days from the date of service to the court for the amount claimed, together with interest (if any) and costs. The Judge may, thereupon, unless the defendant by affidavit or declaration shall satisfy him that he has a good defence to the action on the merits, or discloses such facts as may be deemed sufficient to entitle him to defend, pass a decree for the plaintiff accordingly."

Rule 40 lays down the procedure where part of the claim is admitted. Rule 41 provides for the contingency of one of the defendants having a good defence and the others not having such defence. Rule 42 prescribes the form No. 3 for summons for judgment. Rule 43 deals with the situation where the defendant does not complete his security or carry out any other direction of the Court and Rule 45 provides for putting down for hearing summary suits where even leave to defend is given, for early hearing before a Judge appointed for the purpose by the Chief Judge unless it is transferred to long cause list.

4. It will be expedient to also mention that, under the authority given, the Bombay High Court had made application of the summary procedure of Order XXXVII with amended rules to the Bombay City Civil Court. The Gujarat High Court also framed Rules for the Ahmedabad City Civil Court in exercise of the powers conferred by Sections 122 and 128 of the CPC and Article 227 of the Constitution and by other powers enabling it to make such rules. Rules 142 to 148 contained in Chapter XI of the said Rules are in pari materia with those of

the Small Cause Court Rules. We have referred to these provisions as they have been the subject matter of the decisions of the Bombay High Court as well as this Court wherein also a challenge was made against the provisions of the summary procedure of Order XXXVII and the City Civil Court Rules framed by the High Courts on their constitutional validity on the ground of contravention of the guarantee of equal application of laws given under Article 14 as also on the ground that they violate the fundamental principles of natural justice. We shall refer to these decisions at the proper place. These are all the provisions of law which we need refer to for the purposes of appreciating the contentions raised.

5. The aforesaid provisions prima facie show that the object of the summary procedure is that in a large commercial town certain types of litigation concerning the commercial community should be expeditiously handled and brought to an end, including the realisation of the decretal amount, if a decree is passed. This is intended to give impetus to commerce and industry and thereby benefit the place as a whole by inspiring confidence in the large commercial population of the town that their causes in respect of monetary claims of liquidated amounts would be justly and expeditiously disposed of and their claims will not hang on for years blocking their money and transactions for long periods with a comparatively greater disadvantage to them than in litigation of other types. Out of long experience and tried methods, legislature thought fit to include Order XXXVII in the CPC for application to certain suits in certain High Courts only and empower the States to make them applicable wherever and to whichever Courts they thought proper to apply. It also empowered, u/s 128, all the High Courts, subject to the approval by Government, to frame rules extending the summary procedure to certain other types of suits as we have already noticed. The High Court has also been empowered, so far as small Cause Courts are concerned, by the Presidency Small Cause Courts Act, to extend the summary procedure to Small Cause Courts when they deem it expedient so to extend. That is how we find the summary procedure in the Small Cause Court at Ahmedabad. The city of Ahmedabad is an important commercial town. There can be no doubt as regards the rational basis on which this procedure is applied to a town where such litigation is much larger than at other places and also to such Courts where such litigation has to be handled in a large measure.

6. Having seen generally the objects and purpose of the provisions of the summary procedure, we now proceed to consider what exactly are the powers conferred on the Court under these provisions. This question has been considered by the Supreme Court in two decisions, in *Santosh Kumar Vs. Bhai Mool Singh*, , Bose J. speaking for the Court, has observed that wherever the defence raises a "triable issue", leave must be given, and when that is the case it must be given unconditionally, otherwise the leave may be illusory, if the Court is of opinion that the defence is not bona fide, then it can impose conditions and is not tied down to refusing leave to defend. But it cannot reach the conclusion that the defence is not bona fide arbitrarily. It is as much bound by judicial rules and judicial procedure in reaching a conclusion of this kind as in any other matter.

Where the defence is a good and valid one, conditions cannot be imposed. The power to impose conditions is only there to ensure that there be a speedy trial, if there is reason to believe that the defendant is trying to prolong the litigation and evade a speedy trial, then conditions can be imposed. But that conclusion cannot be reached simply because the defendant does not adduce his evidence even before he is told that he may defend the action. It has been further observed as follows:--

"It is always undesirable, and indeed impossible, to lay down hard and fast rules in matters that affect discretion. But it is necessary to understand the reason for a special procedure of this kind in order that the discretion may be properly exercised. The object is explained in *K.R. Kesavan Vs. The South Indian Bank Ltd.*, , and is examined in greater detail in *G. Sundaram Chettiar Vs. P.A. Valli Ammal*, to which we have just referred. Taken by and large, the object is to see that the defendant does not unnecessarily prolong the litigation and prevent the plaintiff from obtaining an early decree by raising untenable and frivolous defences in a class of cases where speedy decisions are desirable in the interests of trade and commerce. In general, therefore, 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."

In para 12 of the report, the following observations are made:--

"The learned Judge has failed to see that the stage of proof can only come after the defendant has been allowed to enter an appearance and defend the suit, and that the nature of the defence has to be determined at the time when the affidavit is put in. At that stage all that the Court has to determine is whether "if the facts alleged by the defendant are duly proved" they will afford a good, or even a plausible, answer to the plaintiff's claim. Once the Court is satisfied about that, leave cannot be withheld and no question about imposing conditions can arise; and once leave is granted, the normal procedure of a suit, so far as evidence and proof go obtains."

This latter part of the observations of the learned Judge, if read separated from the context of the facts and other observations made in the judgment, enables an argument that at the stage of the summons for judgment, the test is whether "If the facts alleged by the defendant are duly proved, they will afford a good or even plausible answer to the plaintiff's claim and if the Court is satisfied about that, unconditional leave must be granted." But the exact effect of this part of the judgment has been explained by the Supreme Court in *Milkharam (India) Private Ltd. and Others Vs. Chamanlal Bros.*, , by observing that that part of the observations of the learned Judge has to be understood in the background of the facts of the case that the Court was called upon to consider. There the trial Court being already satisfied that the defence raised a triable issue, was not justified in imposing a condition to the effect that the defendant must deposit security because he had not adduced any documentary evidence in support of the

defence. The stage for evidence had not been reached. Whether the defence raises a triable issue or not has to be ascertained by the Court from the pleadings before it and the affidavits of parties and it is not open to it to call for evidence at that stage. If upon consideration of the material placed before it the Court comes to the conclusion that the defence is a sham one or is fantastic or highly improbable, it would be justified in putting the defendant upon terms before granting leave to defend. Even when a defence is plausible but is improbable, the Court would be justified in coming to the conclusion that the issue is not a triable issue and put the defendant on terms while granting leave to defend. It is further observed by the Supreme Court as follows:--

".....It is indeed not easy to say in many cases whether the defence is a genuine one or not and, therefore, it should be left to the discretion of the trial Judge who has experience of such matters both at the bar and the bench to form his own tentative conclusion about the quality or nature of the defence and determine the conditions upon which leave to defend may be granted. If the Judge is of opinion that the case raises a triable issue, then leave should ordinarily be granted unconditionally. On the other hand, if he is of opinion that the defence raised is frivolous, or false, or sham, he should refuse leave to defend altogether. Unfortunately, however, the majority of cases cannot be dealt with in a clear cut way like this and the Judge may entertain a genuine doubt on the question as to whether the defence is genuine or sham or in other words whether it raises a triable issue or not. It is to meet such cases that the amendment to Order 37, Rule 2 made by the Bombay High Court contemplates that even in cases where an apparently triable issue is raised the Judge may impose conditions in granting leave to defend." ts.

These observations would also apply to the impugned provisions of the rules for summary procedure applicable to Ahmedabad Small Cause Court particularly Rule 39 read with Rule 3 of Order XXXVII. In short, the principles decided by the Supreme Court are that (1) if a triable issue is raised, unconditional leave to defend should be granted; (2) if the Court is satisfied beyond doubt that the defence raised is frivolous, false or sham, leave to defend should be refused; (3) however, if 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 Judge may impose conditions for granting leave to defend. It would also be useful to note that the learned Judges of the Supreme Court have expressed their opinion as regards the object of the summary procedure. It has been observed that Order XXXVII, Rule 2 is applicable to what may be compendiously described as commercial causes. Trading and commercial operations are liable to be seriously impeded if, in particular, the money disputes are not to be adjudicated upon expeditiously. It is these conditions which have to be borne in mind for the purpose of deciding whether leave to defend should be given or withheld and if given, should be given subject to conditions. Care must be taken to see that the object of the rule to assist expeditious disposal of the commercial causes to which the order applies, should not be defeated. At the same time,

care should be taken to see that real and genuine triable issues are not shut out by unduly severe order as to deposits.

7. Against this background of facts and law, we now proceed first to examine the submission of Mr. N. J. Mehta, the learned advocate for the applicant, concerning the challenge based on the ground of the rules being invalid as they conflict with the fundamental right guaranteed under Article 19(1)(f) which cover grounds Nos. 1 and 2 as raised by him.

8. Article 10(1)(f) of the Constitution lays down that all citizens shall have the right to acquire, hold and dispose of property. However, by Clause (5) the Constitution does contemplate and enables certain restrictions to be imposed on this fundamental right. It provides that nothing in Clause (f) shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, reasonable restrictions on the exercise of the right conferred by Sub-clause (f) in the interests of the general public. In order to substantiate the challenge on the ground of the rules being violative of the fundamental right under Article 10(1)(f) read with Sub-clause (5), the applicant has to establish two facts (1) that the impugned rules of summary procedure as applicable to the Ahmedabad Small Cause Court impose restrictions on his fundamental right to acquire, hold and dispose of property, and (2) that the said restrictions are unreasonable. On the first part of the contention, it was urged by Mr. Mehta that his challenge was not to the decision or order passed by the Court whereby the defendant is either refused leave or is given a conditional leave on deposit of an amount or giving of security, but to the provisions of the rules themselves which entitle the Court to pass such orders which are violative of the fundamental right of the defendant. So far as the order is concerned, he would challenge it on the ground of being erroneous because it is based on the rules which permit the Court to pass such an order which affected the fundamental right to hold property. The challenge to the impugned provisions on the first part of the contention was formulated as follows :--

(1) When leave to defend is refused and the decree is passed, reliance is only placed on the affidavits filed and no opportunity is given to the defendant to defend his cause either by cross-examining the plaintiff or his witnesses, if any, or by leading oral evidence. The decree so passed, inevitably affects his property by compelling him to part with the property in execution of such decree.

(2) (a) Where the Judge makes a conditional order, he has a mere doubt regarding the quality of the defendant's defence and by imposing the condition of security or deposit the Court virtually compels the defendant to purchase his right of defence and if the defendant is not able to comply with the condition, a decree would be passed and that would affect the right of the defendant to hold property.

(b) The order of conditional leave affects the defendant's property because he is made to deposit the amount and in case of his ultimate success, such order

deprives him, at least temporarily, for the period of litigation of the right to hold that property and thus affects his fundamental right.

(3) By depriving the defendant of the right to defend property without a reasonable opportunity given in consonance With the principles of natural justice, the summary procedure creates a direct restriction on his right to hold property.

9. In order to focus our attention to certain principles having a bearing on this part of his submission, we were referred to the following decisions of the Supreme Court.

10. In *re Kerala Education Bill* AIR 1958 SC 956, reliance was placed on this decision for the limited purpose of showing that while determining the constitutional validity of a provision, regard must be had to the real effect and impact thereof on the fundamental right and further that in Judging the validity of any law regard must be had to its real intendment and effect on the rights of the aggrieved party rather than to its form. It was also laid down that the legislature cannot indirectly take away or abridge the fundamental right which it could not do directly. With these general principles, there can be no quarrel. The question is, what is the effect of these principles on the facts of the present case and whether they have any application to it. We shall examine this aspect in due course.

11. The next decision to which our attention was drawn is *Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others*, . This was done with a view to urge that though in England it was open to the Parliament, Parliament being the supreme authority, to abridge or even take away even fundamental right, in India that cannot be done as even Parliament's authority to make laws is subject to the fundamental right guaranteed to the citizen under various Articles including Article 19. There can be no dispute about the correctness of this proposition of law. But as we shall point out the principle laid down does not come in the way of the impugned provisions of the summary procedure.

12. It was submitted on behalf of the applicant that these provisions regarding the summary procedure have, in substance, the effect on the defendant's fundamental right to hold property inasmuch as it provides a procedure whereby his right of defence in respect of his property has been taken away or arbitrarily abridged. What directly affects the defendant is the provisions of the summary procedure that authorise the Court to decide upon the validity of the claim of the plaintiff on mere affidavits and without affording the defendant adequate opportunity to defend the claim made. Where leave to defend is refused. the Court comes to the conclusion merely on the affidavits filed that the defendant's defence is sham or mala fide and the decree is passed. The defendant is thus deprived of his right to hold property in execution of that decree. It may be that literally interpreted, the property is not directly affected but the right to hold property is directly affected or, in any case, threatened by such decree passed. The right to hold property necessarily includes the right not to be deprived of it

except by a process of law which passes the test of reasonableness. Therefore, it affects the defendant's right to hold property. It was conceded that the right to defend cannot be claimed to be a fundamental right on its own. But it was urged that the defendant has a right not to be deprived of his property except in due course of law. The inevitable consequence of the working of the impugned rules is to be seen in the case where the decree is passed on the ground that the defence is sham or not bona fide. The Inevitable result is that the decree follows without any proper opportunity being given to the defendant to defend (against) the claim of the plaintiff. Where the Court feels doubtful about the bona fides of the defence, an order to deposit is made which inevitably compels the defendant to deposit if he wants to avoid a decree being passed. So in that case, the very right to defend property is made dependent upon the liability to part with the amount of deposit at least for the period of litigation. Thus, the order to deposit is also a restriction on the right to hold property. Again, though the Court only feels doubtful as regards the bona fides of the defence, the defendant is given no opportunity to exercise his valuable right of cross-examination or leading of evidence to remove that doubt and leave to defend is granted only on condition of depositing an amount. An impecunious defendant may not be able to make such a deposit and the result would be that the decree would be passed in favour of the plaintiff. The direct result of the impugned rules. In either case, therefore, is to deprive the defendant of his property without giving him proper opportunity to defend. In law, therefore, these rules themselves violate the fundamental rights and, therefore, they should be struck down.

13. We will examine these submissions made on behalf of the applicant but before we do so, we may as well mention the submissions made on behalf of the opponent by his learned advocate Miss K. A Dabu. It was contended that before the application of Article 19(1)(f) is attracted, the person aggrieved has first to establish that some specific property of his is affected by the impugned provisions of law in such a way as to amount to any arbitrary restriction on his right to acquire, hold or dispose of such property. Unless, therefore, the applicant here can put his finger on any specific property and point out to the Court that the impugned rules directly affect the right to hold that property the validity of the rules cannot be challenged on that ground. In the present case, no restrictions are placed by the impugned rules on any property of his. According to the learned advocate, the amount of Rs. 1,000/- in the hands of the defendant is the property of the plaintiff which he claims to recover. Therefore, there is no property of the defendant which is affected. We, however, do not see any force in this contention. In the first place, until the plaintiff succeeds in establishing his case, the amount of Rs. 1000/- in the hands of the defendant cannot be said to be the plaintiff's property. But apart from that,, if the rules which enable the passing of a decree for Rs. 1000/- directly and inevitably affect the right to hold any property of the defendant, they can be challenged on the ground of their being violative of his fundamental right under Article 19(1)(f). There is little doubt that the provision of law which prescribes the procedure with the very

object of creating arbitrary restrictions on any of the fundamental right, even though discretion may be vested in the Court by the procedure provided, the provisions providing the procedure themselves would be invalid.

14. The next submission was that the object and purpose of the impugned provisions is to provide a procedure for speedy disposal and realization of certain monetary claims of liquidated amounts in commercial causes and to achieve that object, discretion is given to the Court to decide on affidavits whether conditional or unconditional leave to defend should be given or leave should be refused. If in passing of such order, any right to property of the defendant is affected, the rules themselves cannot be held to be bad. The object of the rules is merely to provide a speedy remedy in certain types of litigation and they do not aim at creating any restriction on the fundamental right of the defendant and if, as a result of judicial decision arrived at on the basis of the procedure so provided, any right to hold property is incidentally affected, it cannot go to affect the constitutional validity of the rules providing the procedure. The rules, if at all, only restrict or regulate his right to defend the money claim made by the plaintiff and right to defend is not a fundamental right. We find that there is substance in this submission made on behalf of the opponent and it deserves to be accepted as we shall presently point out.

15. As important constitutional questions of far reaching consequence are involved in this case, we had requested the learned Acting Advocate General to assist us and he has kindly done so for which the Court expresses its thanks. He did not support the contention raised on behalf of the applicant He submitted that now the principle is well settled that the effect on the fundamental right of the impugned provisions must be direct. The impugned legislation must directly legislate in respect of the subject covered by the Article under which the fundamental right is claimed and not merely incidentally or indirectly touch the right. The test is that the provisions objected to must directly and inevitably affect the fundamental right which is alleged to have been violated. In support of his submissions, he heavily relied upon the case of *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, .

* * * * * We have preferred to quote extensively from the above decision as in our view, the submission of the learned Acting Advocate General that the principles decided in that case should govern the present case is correct and it will be proper to see whether, having regard to these principles, it can be said that the impugned rules are violative of the applicant's right to hold property. The tests laid down, shortly speaking, in the said decision are (1) whether the intention or the proximate effect and operation of the impugned provisions are such as to take away or arbitrarily restrict the fundamental right of the applicant under Article 19(1)(f); (2) only direct and inevitable consequences of the impugned provisions can be taken into consideration for determining the validity; mere possibility or indirect effect of the impact of the impugned provisions in conceivable cases would not vitiate the said provisions.

16. From the principles laid down, it can be seen that the emphasis is not on the incidental or possible result that may enure but what is material for the test is to see the aim and object of the provisions. The intention and the direct and inevitable effect of the rules have to be seen to find out whether they affect the defendant's right to hold property. Unless the applicant proves that the rules affected his particular fundamental right as a direct and inevitable result he cannot succeed.

17. As we have already observed, if power is given to frame rules, such rules have to be subjected to fundamental rights and if discretion is given to the Court to act in a particular manner exercise of such discretion cannot be challenged as violating the fundamental right, it being a judicial determination, but the rules giving discretion may be struck down if they themselves violate fundamental rights. In that case the decision must also fail. But such is not the case in the matter on hand. When we turn to the present case and apply the test laid down by the Supreme Court, as already observed, the aim and object of the impugned rules is to provide a machinery for adjudication of commercial disputes involving claims of liquidated amounts, expeditiously and for securing or making it possible to expeditiously recover the amount, if a decree is passed. It does not deal with any of the fundamental rights to hold property, of the defendant. Looked at even from another angle, what Rule 39 does is to provide for the manner and the conditions subject to which the defendant will have a right to defend such a money claim. Even in the wider sense of the word "property", at this stage no property of the defendant is involved or is concerned. In context with the provisions with which we are dealing and giving a wider connotation to the concept of property which would include an actionable claim, the property here is the claim which the plaintiff makes. It is something which is capable of being owned or acquired, held or disposed of. But that cannot be said about the right of defendant to defend the money claim made against him. The right to defend a money claim can never be property in any sense, much less the so called right to defend the claim in a particular manner, viz., having the right to cross-examine or lead oral evidence. The rules only directly affect the right of the defendant to resist a money claim for a liquidated amount and as no right to property of the defendant is directly involved, no question of his fundamental right to acquire, hold or dispose of any property can be said to be affected by the impugned rules. We are unable to accept the submission of Mr. Mehta that when, under the summary procedure the Court passes a decree on affidavits only and without giving the defendant the right to cross-examine the plaintiff or lead evidence himself, believing the defence of the defendant to be bogus or not bona fide, the procedure itself directly affects his fundamental right to property. What is affected at the most is the mode of his defence. Right to defend is not a fundamental right and, in our view, it is open to the State to provide restrictions on the right to defend or regulate his right to defend, and the provisions that prescribe such restriction cannot be attacked as contravening any fundamental right. It is true that if the restrictions are such that they contravene the very

fundamental principles of natural justice, they may be invalid on that score. But that aspect would fail for consideration when we go to consider the question as to whether the restrictions placed are reasonable or not. At this stage we are only concerned with the question as to whether any right of the defendant to hold property is directly or inevitably contravened by the rules of the summary procedure themselves.

18. Mr. Mehta tried to support his submission by relying on the decision of *Prem Chand Garg Vs. Excise Commissioner, U.P., Allahabad*, wherein the Supreme Court struck down one of the Supreme Court Rules on the ground of it contravening a fundamental right. In the said case, the Supreme Court, by majority decision, held that there can be little doubt that if the impugned rules affected adversely any of the rights guaranteed under Article 19(1)(f) and cannot pass the test of reasonableness, they would have to be struck down. In the case before the Supreme Court, the rule directly and inevitably and as a necessary consequence thereof was held to retard and infringe the fundamental right of the petitioner given to him under Article 32 to assert or vindicate his right by moving the Supreme Court, but such is not the position in the instant case as pointed out. Here, when under the summary procedure the leave to defend is refused -- and we may say that that happens in only exceptional cases where the defence is found to be palpably untenable or mala fide, it is so done after a judicial adjudication. The affidavits filed by both the sides are taken into account and the defendant is heard. It is true that he does not get the right which in other proceedings is available of cross-examining or leading of oral evidence. But that is only the mode of defence or right to resist the money claim that is specially prescribed. No litigant, however, can claim to have a right to defend in a particular manner. The right to defend cannot be raised to the pedestal of the fundamental right. The right to hold property does not include the right to defend a monetary claim made against him. These impugned rules, therefore, cannot be challenged as contravening Article 19(1)(f) as they cannot be said to affect any property right of the defendant. Even when we go to consider the case when the Court passes an order of conditional leave to defend and requires the defendant to deposit an amount, the same result ensues. Properly viewed, by granting such conditional leave the Court does not actually order the making of a deposit. The Court only imposes a condition that if the defendant desired to defend the claim against him, he may deposit and defend. It is not like an order of attachment of property or issuing of any injunction against any property. He brings the money in Court by a voluntary act of his because he is desirous to defend and as pointed out, the right to defend is not a fundamental right at all. Again, by depositing he does not lose the ownership at all. It is only when the claim is established that he loses it. But then it is established to be not his property and, if not, he gets it back. The deposit is, as a matter of fact, only by way of a security for the plaintiffs claim. True it is that he temporarily loses control on the amount while it is in the custody of the Court. But that cannot mean that the rules affect the right to hold property as necessary and direct consequence. It is only on a judicial

assessment of the facts that the said order is made when the Court believes that his defence may or may not be true. If a conditional order is made and if he cannot deposit and the decree is passed, then that is a consequence of an extraneous fact of his not having enough funds with him. But that cannot again, as pointed out in the case of *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, be a ground to hold that the provisions are invalid as contravening any fundamental right.

19. We may here with advantage refer to one of the latest decisions of the Supreme Court in *Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*, .

* * * * *

Gajendragadkar C. J. observed that it was well settled that in examining the validity of a legislation it was legitimate to consider whether the impugned legislation was the legislation directly in respect of the subject covered by any particular Article of the Constitution or touch the said Article only incidentally or indirectly. He applied the same test of pith and substance to the matter with which they were concerned and came to the conclusion that the impugned order was a judicial order passed by the Court in exercise of this inherent jurisdiction and its sole purpose was to help the administration of justice. Any incidental consequence which may flow from the order will not introduce any constitutional infirmity in it. Certain observations of Sarkar J. in his concurring judgment are also instructive, He has observed as follows:--

"I turn now to the question whether the law which Tarkunde J, had applied was a valid law. It is said that it is not a valid law as it offends the fundamental right to freedom of speech conferred by Article 19(1)(a). Now that law is the inherent power of a High Court to prevent publication of the proceedings of a trial. The question is, does this power offend the liberty of speech? It seems to me beyond dispute that the power to prevent publication of proceedings is a facet of the power to hold a trial in camera and stems from it. Both are intended to keep the proceedings secret. Suppose a Court orders a trial in camera and assume it had a valid power to do so. In such a case the proceedings are not available to persons not present at the trial and cannot for that reason at least be published by them. Can any such person complain that his liberty of speech has been infringed? I do not think so. He has no right to hear the proceedings. Indeed, there is no fundamental right to hear. If he has not, then it should follow that his liberty of speech has not been affected by the order directing a trial in camera."

He has further observed that the exercise of the power to hold the trial in camera, no doubt has the effect incidentally of preventing a citizen from publishing the proceedings of the trial for he is prevented to hear them. What he cannot hear he cannot of course, publish. All the same, the learned Judge did not think this restriction on the liberty of speech is a violation of fundamental right in regard to it. Firstly because the liberty of speech was only affected indirectly and

it had been held by the Supreme Court in many cases beginning with A.K. Gopalan Vs. The State of Madras, that when a law which, though it violates a fundamental right is nonetheless good under any of the Clauses (2) to (5) of Article 19, indirectly affects another fundamental right for which no protection can be claimed under these clauses, no grievance can be founded on the indirect infringement. He further held that all that the law did was to legally prevent a person from entering the court and hearing the proceedings. Really there was no such thing as an absolute right to hear. In our view, the principles laid down and confirmed by the Supreme Court in this case of Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, go directly to support the view we have taken.

20. Realising that the principles laid down by this decision and particularly in the S. C. decision of Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, if made applicable would be an unsurmountable difficulty in the way of the applicant his learned advocate tried to persuade us that the ratio of the said decision cannot apply to the present case. He argued that the provisions were held not to violate the fundamental right as the consequences which were visualized by the petitioners were all such as could only be held to be remote and dependent upon various factors which may or may not come into play and the possible eventuality of this type would not necessarily be the consequence which could be in the contemplation of the legislature while enacting a measure of this type for the benefit of the workmen concerned. It was urged that, therefore, in the said case, as the provisions of a beneficial legislation were attacked, the argument advanced by the employers' side that the burden, if laid, some of them would have to close down was held to be remote because the factor of financial inability and the other factors which were pressed into use for supporting the argument were of a variable nature and very remote. We do not see any force in this submission. The aim and object of the summary procedure is, as pointed out to provide expeditious remedy to proceed with and realise the money claims in certain commercial causes which is in the interests of the general public. The legislature and the rule making authority by enacting these provisions could not be said to have any ulterior motive because the defendant in some cases may be called upon to deposit an amount before leave to defend is granted or his evidence is recorded or in some cases impecunious defendants may not be able to deposit the amount at all or in a rare case the Court may wrongly refuse leave to defend and pass a decree. It cannot be said from these facts that the provisions of the summary procedure are enacted with the aim or object of putting the defendant to any of the aforesaid disadvantages visualised on behalf of the applicant At one stage Mr. Mehta appeared to argue that it is well-nigh impossible for a Court to come to a correct decision on merely reading the affidavits and without the defendant getting the right to cross-examine the plaintiff or permitting him to lead oral evidence, that the defence is entirely bogus or mala fide. We find ourselves unable to agree with Mr. Mehta. As we have indicated, the Judge comes to the conclusion after exercising proper

judicial discretion and, indeed, only in very few cases where his judicial conscience is satisfied beyond doubt about the falsity of the defence that the Judge will refuse leave to defend. To say that in no case a Judge will be able to reach a correct decision on this score is to unjustifiably underestimate or rather disregard the very basis of judicial system and judicial discretion. Then again, where the conditional order is made, the Court is not fully satisfied that the defendant has a good or bona fide defence. Then keeping in mind the object of the legislation, a discretion is given to the Judge to grant conditional leave on deposit being made. There again those defendants who are favourably placed may not feel any financial difficulty while those who are absolutely impecunious in conceivable cases may not be able to meet the requirement and a decree may follow. But then similar was the situation in the Supreme Court case also where marginally situated newspaper establishments were assumed not to be able to, in conceivable cases, bear the strain and may have to disappear after closing down their establishments. But that was held to be a consequence which would be extraneous and not within the contemplation of the legislature and it was further held that the possible impact of these measures in conceivable cases could not be held to vitiate the legislation as such.

21. We, therefore, see no justifiable ground whatever to accept the submission that the ratio of the said Supreme Court decision can have no application to the instant case. These principles apply and they effectively repel the aforesaid contentions advanced on behalf of the applicant. Having carefully considered all the submissions advanced on behalf of the applicant, we come to the conclusion that the impugned rules cannot be held to affect any fundamental right of the applicant to acquire, hold or dispose of property.

22. This leads us to the second limb of the submission on behalf of the applicant in respect of violation of Article 19(1)(f) that if the said Article is held to be attracted then whether the restrictions are unreasonable. Strictly speaking, having come to the conclusion that we have, on the first part of his submission, there is no necessity for us to deal with this question but as all the learned advocates have advanced elaborate arguments on it, we deem it expedient to examine this aspect also.

23. It was argued that the summary procedure and particularly the procedure provided by the latter part of Rule 39 of the Ahmedabad Small Cause Court Rules read with Rule 3 of Order XXXVII, Civil Procedure Code, create unreasonable restrictions on the fundamental right of the defendant to hold property inasmuch as it does not give the defendant the right of hearing and defend the cause in consonance with the requirements of natural justice. The requirement of natural justice is not a static or a definitive concept and it varies with the nature of the tribunal and the nature or consequence of the order made. Here we are concerned with the civil Court, a judicial authority, and the order passed affects the defendant's right to hold property. Therefore full compliance with the requirement of; natural justice has to be insisted upon and, according to Mr.

Mehta, the minimum requirement is what is to be found in the following passage at p. 1709 in Willoughby on the Constitution of the United States 2nd Edition :--

"From the general characterizations of due process which have been already quoted, it will have been seen that an essential element of due process of law is that the parties whose personal or property rights may be affected by any judgment, verdict, or decree that may be rendered or given by a court shall have had "his day in court". This means: (1) that he shall have had due notice, which may be "actual or constructive" of the institution of the proceedings by which his legal rights may be affected; (2) that he shall be given a reasonable opportunity to appear and defend his rights, including the right himself to testify, to produce witnesses, and to introduce relevant documents and other evidence; (3) that the tribunal in or before which his rights are adjudicated is so constituted as to give reasonable assurance of its honesty and impartiality; and (4) that it is a Court of competent jurisdiction."

Stress was particularly laid on the part that the defendant should have the right himself to testify to produce witnesses and to introduce relevant documents and other evidence. It was urged that in the case of AIR 1965 SC 1998 (Supra), as pointed out, the Supreme Court has indicated the scope and effect of these provisions regarding the summary procedure. It was argued that the effect of the procedure is that full or adequate right of hearing is taken away and no right to lead oral evidence or cross-examine the adversary or his witnesses is available to the defendant and the Court comes to its decision on suspicion of the defence being not genuine or bona fide. Though the court remains in more doubt that the defence may or may not be genuine, no opportunity is given to the defendant to remove that doubt by leading oral evidence and cross-examining the plaintiff or his witness. If an order for depositing some amount is made, an impecunious defendant would not be able to deposit the amount and a decree would follow though he may have a good defence. He gets no opportunity to dispel the doubt by cross-examination or leading evidence and for want of reasonable opportunity to defend, his right to hold the property would be adversely affected. Even when leave to defend is refused, the Court comes to the conclusion that the defence was sham or frivolous only on the basis of affidavits and the defendant gets no opportunity to convince the Court to the contrary by cross-examining the plaintiff or leading evidence. This procedure virtually calls upon the defendant to show that he has a good defence before he enters upon his defence. The Court, under such circumstances, can never come to a rightly just decision. Mr. Mehta conceded that the right of cross-examination or leading oral evidence may not be such principles of natural justice as can be said to be inviolate in all cases. He, however, argued that the very nature of the concept of natural justice is flexible.

The content of the principle of natural justice varies with the nature of the tribunal and the nature of the consequences of the order passed. The basis of our judicial system is the adversary system" and the courts have not to travel beyond the record in search of truth. The truth is to be ascertained from

evidence on the record and under such circumstances, the right of cross-examination and leading of oral evidence is the main plank of the right to defend. Before Courts and tribunals which are under the obligation to decide judicially, the rights of cross-examination and leading of oral evidence are inviolate. These submissions made on behalf of the applicant, though in parts have substance, as we shall point out, by and large, they are fallacious and the conclusions reached are incorrect.

24. In the first place, the very basis on which the submissions are advanced is inherently weak. The observations from Willoughby relied upon by Mr. Mehta are concerning the doctrine of Police Powers and the corresponding doctrine of "Due process of law" on which the American Constitution is rested which is not the case in India. The provisions of our Constitution have to be interpreted by the plain words used in the Constitution and not with reference to the connotation of the doctrine of police power or due process of law, though there may be some similarity in the principle underlying the doctrine of due process of law and of "reasonable restriction" to be found in the Indian Constitution. The argument starts with the premises that the particular type of procedure mentioned by Willoughby is the sine qua non of reasonableness and is, therefore, fallacious in its very basis. It is true that the restriction imposed upon any fundamental right guaranteed by Article 19 would not be considered to be reasonable if it seeks or empowers an authority to impose a restriction on a fundamental right without complying with the rules of natural justice. It is also true that there can be no universal standard of natural justice to be made applicable to all the cases and the content or requirement of natural justice is bound to vary with the nature of the tribunal, But it is now well established that there are only two broad principles or fundamental requirements which form the basis of the doctrine of natural justice and they are (1) the authority deciding the matter must be independent, unbiased and impartial and (2) the principle of audi alteram partem that is to say, no man shall be condemned unheard. In this case we are more concerned with the second requirement. Broadly, speaking, the requirement of natural justice would be met if the party concerned is given reasonable notice of the case he is required to meet, the opportunity of stating his case and a reasonable opportunity of being heard. The question is, do the impugned provisions of the summary procedure contravene the requirements of the principle of audi alteram partem? The submission, as we have seen, on behalf of the applicant is, that it does because the procedure does not afford him the opportunity of full hearing including the right of leading evidence and cross-examining the plaintiff and his witnesses, if any.

25. The question for our consideration, therefore, is whether the fact that full defence at the first stage is not permitted to the defendant by leading of evidence or cross-examining the plaintiff amounts to non-compliance with the requirements of natural justice so as to amount to unreasonable restrictions. In our judgment, it cannot be so held. There can indeed be no universal rules laid down as to the kind of hearing required to comply with the requirement of

natural justice. The summary procedure entitles the defendant to receive notice of the case he has to meet, entitles him to appear and further to file his own affidavit or affidavits of his witnesses in which he can fully meet the case of the plaintiff and also submit his arguments himself or through his advocate in order to satisfy the Court prima facie that he has a good defence to make or disclose such facts as prima facie be sufficient to show that he is entitled to make a full defence in the case. All the three ingredients of notice, opportunity to meet the adversary's case and the right to be heard before the Judge who decides the matter are complied with. The Judge dealing with the matter, where the summary procedure applies, has to decide judicially after taking into account the contents of the affidavit for summons for judgment and the plaint on the one hand and the affidavit filed in reply thereto by the defendant, whether to grant leave conditionally or unconditionally or refuse leave to defend. Therefore, all the fundamental principles of natural justice are complied with and only on judicial adjudication the defendant's right to hold property, if at all, is affected. A similar view has been taken by this Court in the decision of *Sam. M. Haeems Vs. Samson J. Benjamin and Others*, wherein Chief Justice Shelat, as he then was, has made the following observations in respect of the provisions of the summary procedure so far as they apply to the Ahmedabad City Civil Court which, as we have indicated, are in pari materia with the impugned provisions:--

"The second branch of his argument was that these rules are also illegal as they violate the principles of natural justice. It is somewhat difficult to appreciate this branch of the argument, for the rules under Order 37 and our Rules 142 to 148 confer right to a defendant in a summary suit to file his appearance and an affidavit in reply to a summons for judgment taken out by a plaintiff. It is only after the Judge dealing with such a summons has considered the affidavit filed by the defendant showing cause against the summons for judgment and has heard the parties, that he can dispose of such a summons. Since the rules expressly provide for the right to appear, to file affidavit disclosing the defence and to be heard it is difficult to understand how it can be said that they are in breach of the principles of natural justice. It is true that where a defendant fails to file his appearance within the time prescribed, or where he fails to obtain leave to defend, or where he fails to comply with the order passed by the Judge on such summons, such as for instance where he fails to furnish the deposit as ordered by the Judge, the averments made in the plaint are deemed to be admitted by such a defendant. But the deeming provision comes into play only where any of these things happens and not otherwise. It is, therefore, not possible to say that a defendant to whom the summary procedure applies is not afforded an opportunity of defending himself or being heard. Principles of natural justice, therefore cannot be said to have been violated by any of the provisions impugned in this petition."

26. It was tried to be urged that in the said decision it does not appear to have been argued that the restrictions on the right of cross-examination and leading of oral evidence amount to unreasonable restrictions as they violate the

requirement of natural justice, but we do not find any substance in this plea. The only basis of the challenge that possibly could be advanced to support the submission of the rules of summary procedure not complying with the rules of natural justice is the restriction on the right to make defence by way of cross-examination and leading of oral evidence. It is not, therefore, possible to distinguish the said decision on that score. True it is that the said decision is of a Single Judge and it is open to the applicant to press on us to differ from it, but we see no reason to do so and, with respect, adopt the reasoning and conclusion reached by the learned Judge to be correct.

27. An effort was made on behalf of the applicant to rely on the decisions in respect of the inquiry under Article 311(2) of the Constitution wherein it had been held that even in an administrative inquiry where there is a duty to decide judicially, the right of cross-examination and even the right to claim copies of documents relied upon are required to be afforded to the person concerned to comply with the rules of natural justice; much more so in an inquiry by a Court which is a full dressed judicial inquiry. It is true that Courts have held that even in quasi judicial inquiry and inquiries held by administrative authorities who are under the duty to decide judicially, have to comply with the principles of natural justice and in some cases the right to cross-examine has been held to be such a requirement. But, as already observed, there is no universal rule that can be laid down as regards the requirement of natural justice except the aforesaid two requirements indicated by us. Where witnesses have been orally examined either in presence or in absence of the person aggrieved and reliance is tried to be placed on such oral evidence, Courts have held that even in administrative inquiries where there is the duty to decide judicially, the party must have the opportunity to cross-examine or even to get copies of relevant documents which are to be used against him. But such is not the position in the present case. No oral evidence is allowed on the part of even the plaintiff. As has been observed by the Division Bench of this Court in *Govindbhai Kalidas Patel (deceased by his heirs Kantilal and Others) Vs. Union of India (UOI) and Others*, where the proceedings were quasi judicial, the question as to what are the rights accorded by the principles of natural justice in a particular case is always a question of some difficulty and the subject though well worn is one replete with impediments to orderly generalization. These rights have been defined in varying language in a large number of cases covering a wide field. The question whether the requirements of natural justice have been met by the procedure adopted in a particular case must depend to a great extent on the facts and circumstances of the case in point. The requirements of natural justice are not such as can be reduced to any formula inclusive or exclusive which can have universal application to every kind of inquiry, for a good deal may depend on the subject matter, the nature of the inquiry itself, the nature and constitution of the tribunal or authority which holds the inquiry and the rules under which the Inquiry is held. It is to be mentioned that in the said case it was held that the right to cross-examine the Deputy Chief Chemist, whose opinion in writing was to be relied

upon against the party concerned, was an essential ingredient to comply with the requirement of natural justice. But that conclusion was reached particularly in view of the fact that there was nothing in the Central Excises and Salt Act, 1944 and the rules thereunder, under which the inquiry was held, which prescribed any particular procedure to be followed in holding the inquiry for the purpose of determining whether an offence of breach of the provisions of the Act and the Rules was established against the person charged for such offence. The Court then proceeded to see whether there was anything in the subject, the nature of the inquiry and the nature of constitution of the Tribunal which required that before the opinion of the Deputy Chief Chemist could be relied upon by the Assistant Collector of the Central Excise for the purpose of holding the charge against the petitioner established, the petitioner should be given an opportunity to cross-examine the Deputy Chief Chemist when such opportunity was demanded by him.

28. The reading of the decision clearly shows that on the broad facts of that case it was held that the petitioner should have had the right to cross-examine the Deputy Chief Chemist. In the present case, the statute and the provisions of law lay down the particular procedure to be followed and it does not provide the right of cross-examination at the first stage of prima facie satisfaction to be reached by the Court. That first stage is where the Court has to merely reach a prima facie satisfaction as to whether the defence is good or sham or mala fide. Right to cross-examine. It is conceded, is not necessary or inviolate requirement of natural justice and, therefore, there is no impediment whatever on the right of the legislature or its delegate to authorise the inquiring authority. Judicial 313 administrative, by providing in the statute any express terms or by implication, not to permit the right of cross-examination or leading of oral evidence and follow only the very basic requirement of natural justice. As the learned Acting Advocate General has rightly pointed out, the object of the statute is speedy disposal of commercial cause and weeding out of false, frivolous, mala fide or doubtful defences and if a full dressed hearing has to be allowed even at the first stage when the Court only tries to ascertain on affidavits whether the defendant has a triable, tenable or bona fide defence, the very object of the statute and the rules would be defeated. In our judgment, therefore, the restrictions put on the manner in which the defendant will be entitled to defend the cause where the summary procedure applies are in the interest of the public in the sense that all those who have a prima facie case in commercial causes of the nature contemplated by the said rules shall be entitled to speedy disposal and recovery of their rightful claims and, as such, are not unreasonable. The contention of the applicant on this aspect also fails.

29. It was urged that unlike the English practice the impugned rules do not provide for an appeal or even require the Court to give reasons while making a conditional order or an order refusing the leave to defend and this also is a factor which makes the rules unreasonable. We are unable to accept this submission also. Neither are the requirements of natural justice, and the legislature may or

may not provide for them in a given procedure. We have at length examined the question of the requirement of natural Justice and have come to the conclusion that the procedure as it stands does not violate any requirement of natural justice and we do not find it necessary to dwell any longer on the subject under this contention also and it is rejected.

30. Now we turn to the challenge made to Rule 39 of the Ahmedabad Small Cause Courts Rules read with Rule 3 of Order XXXVII on the ground of It being violative of the fundamental right under Article 14 of the Constitution. It was submitted that the impugned rules apply unequally to the plaintiff and the defendant though they are similarly situated in relation to the object of the said provisions. If the object of the rules is speedy disposal of the matters. It does so only in favour of the plaintiff and not the defendant. The expeditious disposal could be also in favour of the defendant but it is not because when the defence is found to be vexatious or mala fide, the rules give a speedy decree in favour of the plaintiff by refusing leave to defend, but even if the plaint be vexatious or mala fide and though it may be shown to be so in reply to summons for judgment, the rules do not provide for a speedy disposal of a suit by dismissal and the defendant is compelled to go through the gamut of full hearing and incur the cost and suffer delay till the matter is finally disposed of. Despite the fact that the suit is vexatious and mala fide, the plaintiff will still have the right to lead evidence, cross-examine the defendant and his witnesses and thus have the full advantage of the procedure of full hearing. These rules, therefore, apply unequally to persons similarly situated and should, therefore, be struck down,

31. Article 14 does not provide unqualified guarantee of equal protection of laws. The State is not deprived of the power to classify persons for certain recognised legitimate purposes and "equal protection" only means the right to equal treatment under similar circumstances or to persons similarly situated. Article 14 does not require uniformity of application of laws. For determining whether a classification is reasonable, it is now well established that the Court is required to take into account various factors. The Court has to see the policy underlying the statutory provision and the object intended to be achieved by it. After ascertaining the policy and purpose, the now well-acknowledged dual test has to be applied; (1) is the classification rational and based on intelligible differentia which distinguishes persons placed in one group from those who are not included therein; (2) Has the basis of differentiation any rational nexus or relation with the object and policy of the statute? If these tests are satisfied, the provision cannot be held to be invalid.

32. The object and purpose" of summary procedure, as we have seen, is to provide a procedure in certain class of commercial claims which conduces not only to speedy disposal of matters but more so the speedy realisation of the amount due by the defendant to the plaintiff by curtailing the opportunity to the defendant to protract the litigation or frustrate the decree the plaintiff may get by lengthy proceedings of the general procedure provided for all types of

litigation. Having regard to this primary object of the rules and the policy underlying. It is difficult to hold that the plaintiff and the defendant can be said to be persons similarly situated with reference to the object of the rules. The object is only to enable that class of plaintiffs who have a monetary claim based on negotiable instruments where certain presumptions arise in their favour or claims of recovery of debt or a liquidated demand for money based on contract or guarantee to have their claims decided upon quickly and so also its recovery. In their very nature these claims are such that the Court can, on examining the affidavits and other materials available under the procedure and on hearing the parties or their advocates, decide whether the defence is good, indifferent or bad and pass necessary order for granting conditional or unconditional leave or refuse leave to defend. This necessarily implies also that the policy underlying the provisions is to provide a check against the possibility of a dishonest or false defence put up by a defendant to frustrate the very object of these provisions and it is with this view that the judicial discretion is vested in the Courts to decide on affidavits whether prima facie the defence discloses a triable issue or not or whether the defence is sham or mala fide or whether the defence discloses such facts as may be deemed sufficient to entitle the defendant to a full defence.

33. Even looked at from the point of view of the disadvantage to be suffered by the plaintiff and the defendant having regard to the object of the legislation, the two of them cannot be said to be similarly situated. In the type of cases, which fall within the ambit of the summary procedure, the plaintiff is assumed to be in need of a speedy disposal of his case and speedy recovery of his claim. Delay in recovery of the claims which are prima facie shown to be good claims would work necessarily, greater harm to the plaintiffs by keeping them out of their money by a protracted litigation. The ordinary procedure gives all the opportunity to the defendant to so protract the litigation. If a false suit is filed, the only disadvantage that the defendant suffers is that he has to go through the lengthy procedure, but ultimately he is bound to succeed and furthermore will be entitled to recover the cost of the suit. But if false defence is put up and if the summary procedure is not available, he will be in a position to protract the litigation for years and keep the rightful plaintiff even in a commercial cause, out of his money and also put impediments in the ultimate recovery of the amount even after the decree is passed. To avoid this real and far-reaching disadvantage to a person having such a claim in the commercial world, the summary procedure is enacted. It is obvious, therefore, that even looked at from this point of view and keeping in mind the object of the provisions, the plaintiff and the defendant could not be said to be similarly situated and the classification made is reasonable. Under the circumstances, it cannot be said that the said provisions are discriminatory.

34. The provisions of the summary procedure as applicable to the City Civil Court at Bombay and those applicable to the City Civil Court at Ahmedabad were challenged respectively in the Bombay High Court and this High Court on the ground of their being violative of the fundamental right guaranteed under Article

14 and it will be useful to refer to these two decisions. In the Bombay High Court, in the decision of *Laxman das Devidas Kapadia v. Mathurdas Dwarkadas* (1955) S7 BLR 1118, while dealing with this challenge, the learned Chief Justice Chagla, as he then was, has observed that it had often been stated that Article 14 does not require uniformity of application of law. What Article 14 prohibits is a classification which is not upon any rational basis. Article 14 does not prevent the Legislature from providing that laws shall apply differently to different persons or to different localities, if in so providing the Legislature has in mind a rational classification. Article 14 prohibits a classification which has no rational basis or which is in substance discriminatory in character. The very expression "discriminatory" means that you apply one law to one party or to one locality and a different law to another party or a different locality without there being any reasonable object in doing so, and the question that we have to consider is whether, when the Legislature conferred the jurisdiction of trying summary suits only upon the High Court and left it to the High Court to apply this provision to any Civil Court subordinate thereto, it was passing a law which was discriminatory in character and preventing litigants from enjoying the protection of Article 14. The learned Chief Justice has also observed as regards the object of the summary procedure and stated that the very basis of the summary suits is that where there is a commercial litigation commercial men should get expeditious justice in respect of documents and transactions which are commercial in their nature and which requires a quick disposal in order to give security and confidence to commercial men who are to a large extent responsible for the prosperity of the particular region or city where they reside and where they carry on their business or commerce. If that be the correct view of the reason why special jurisdiction with regard to summary suits is conferred upon the High Court, then it cannot be disputed that the city of Bombay is an important commercial city and that special procedure is necessary in suits involving commercial transactions in the High Court of Bombay. For instance, there are rules with regard to commercial causes which make it possible for those causes to be decided more quickly than ordinary long causes. The High Court then, after examining the position of the City Civil Court in Bombay, observed that commercial men also go to the City Civil Court as much as they go to the High Court and, therefore, the High Court thought it desirable that the commercial men going to the City Civil Court should have the same facilities that they have when they come to the High Court and no distinction should be made whether the suit was below Rs. 25,000/- or above Rs. 25,000/-. It was held that there was a clear reasonable basis why the City Civil Court in Bombay was selected by the High Court for conferment of this summary jurisdiction whereas the other Courts in the State of Bombay were not included in the ambit of Order 37. These rules were also attacked on the ground that a selection was made between one kind of litigation and another kind of litigation and that whereas a defendant in a suit to which Order 37 did not apply was not compelled to make a deposit, a defendant in a suit to which summary procedure applied had to comply with this drastic provision of an order for deposit contemplated by Order

37. The High Court negated that contention also on the ground that commercial litigation in its very nature requires to be differently treated from non-commercial litigation and that it was no use suggesting that any ordinary suit which was tried as a long cause should have the same procedure as a suit in respect of a commercial transaction which required a quick and effective disposal. The learned Chief Justice has further pointed out that the Calcutta High Court, considering the same question, had come to the same conclusion in *Ambalal Purusottamdas and Co. Vs. Jawarlal Purusottam Dave and Others*, .

35. In the case of *Sam. M. Haeems Vs. Samson J. Benjamin and Others*, , to which we have already made a reference, the rules under Order 37, CPC and Rules 142 to 148 of Ahmedabad City Civil Court Rules, 1961, came under the challenge of contravention of Article 14. Shelat C. J. as he then was, dealing with the point has observed that it was well settled that in order that a provision of law may avoid the mischief of Article 14 of the Constitution, the classification that is made by such a provision must be a rational one and that rational classification must have a nexus with the object to achieve which that provision is enacted. The object of providing summary procedure under Order 37 and the Rules made by the High Court is to avoid delay and unnecessary costs in suits which can be easily disposed of and which do not involve elaborate issues or require elaborate evidence. Though the impugned rules cause differentiation the classification is a reasonable one and such classification has a rational nexus with the object sought to be achieved by the Legislature providing summary procedure. No doubt the procedure under Order 37 does create a difference between defendants in ordinary suits and defendants in suits to which summary procedure applies. But there is good reason for such classification and for providing different treatment to defendants in different varieties of suits. It has then been observed that in a commercial city like Ahmedabad it was necessary that that special procedure was introduced. If, on consideration of circumstances existing in the different parts of the State, different procedures are prescribed for different Courts and even for defendants residing in different parts of the State, such differentiation cannot be said to be unreasonable, capricious or arbitrary and cannot invite the mischief of Article 14.

36. True it is that in neither of these cases the challenge was made in the manner or on the ground as is tried to be made in the present case, but, as pointed out, even examining from that angle the classification made between the plaintiff and defendant and the differentiation in the treatment to be given to their causes is based on a rational basis relatable to the very object and policy for which the provisions have been brought into existence. The result is that this contention of the applicant must also fail.

37. As we have indicated hereinabove, the applicant had raised a number of other points including questions on merits of the case. But none of them has been pressed. At the end of the argument, however, the learned Advocate for the applicant prayed that in case the Court was inclined to reject the contentions that

he had raised, then four weeks" time may be given to him to deposit the amount in compliance with the order passed by the Small Cause Court. Considering the circumstances, we are inclined to grant this request and we extend the time for depositing the money to 10th April 1967.

38. The result is that except for this change in the order passed by the Small Cause Court for the time to deposit, the order is confirmed and the Civil Revision Application is dismissed with costs.

39. Rule discharged.