

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR**

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4046 OF 2026

Jayashree Sanjay Juve	]	
Age: 46 years, Occ.: Household,	]	
R/at 16/631, Mhetar Galli,	]	
Near Shivaji Nagar Police Station,	]	
Ichalkaranji, Tal. Hatkanangale,	]	
Dist. Kolhapur – 416115.	]	...Petitioner
	]	
Versus	]	
	]	
Jaywant Ganpatrao Laykar	]	
Age: 65 years, Occ.: Business,	]	
R/at 10/156, Laykar Galli,	]	
Narayan Peth, Ichalkaranji,	]	
Dist. Kolhapur – 416115.	]	...Respondent

.....

*Adv. Ryan D'souza a/w Adv. Shivam Laturiya and Adv. Prerna Somani
i/b Adv. Shivam Laturiya, Advocate for Petitioner.
Adv. Rajvardhan S. Chougule, Advocate for Respondent.*

.....

CORAM : SHAILESH P. BRAHME, J.

DATE : 28th AUGUST, 2026.

FINAL ORDER :

Heard.

2. The Petitioner takes exception to the order dated 23.07.2026 passed below Exhibit - 12 in Summary Suit No. 2 of 2025 refusing to grant leave to defend the suit.

3. The Respondent has instituted Summary Suit No. 2 of 2025 for recovery of Rs.6,00,000/- along with interest against the Petitioner. It is specifically averred that the Respondent lent Rs.3,00,000/- twice in cash to the Petitioner and in lieu of that, a non-CTS cheque dated 07.12.2024 was secured from him. The cheque was dishonoured with a remark 'non-CTS cheque' by Memo dated 09.12.2024 by Bank of India. The amount was demanded which was refused, hence the suit was filed.
4. In pursuance of the summons for judgment, Petitioner appeared in the suit and filed Application Exhibit - 12 seeking leave to defend, raising various pleas to indicate that there existed no such transaction of money lending. A cheque which was issued in the year 2009 is stated to have been misused by the Respondent, who happened to be Chairman of Shahu Corner Co-operative Credit Society. It is contended that the transaction is sham and bogus and application for leave is supported by the communication/correspondence of the bank dated 13.08.2025, Memo dated 09.12.2024 and the cheque itself.
5. The Respondent contested the application. By impugned order, application was rejected.
6. Learned Counsel for the Petitioner, Mr. D'souza, would advert my attention to the averments of the plaint, indicating that cash of Rs.3,00,000/- is stated to have been paid to the Petitioner on two occasions, i.e. 16.11.2024 and 22.11.2024. The transaction itself is

barred and no claim can be set on the basis of such averment. It is further pointed out that the cheque in question is non-CTS and the correspondence with the bank would support that it was issued before 2010. Reliance is placed on the judgments of the Delhi High Court to buttress that Trial Court committed error of jurisdiction. Lastly, it is pointed out that the Trial Court exceeded its jurisdiction in expecting the Petitioner to produce the evidence at this stage of the proceedings.

7. Per contra, learned counsel for the Respondent would vehemently submit that the plea raised by the Petitioner has not been supported by material on record. The transaction with the co-operative bank has not been established at all. It is submitted that it was open for the Petitioner to file complaint for return of the cheque but no steps were taken. It is further submitted that the presumption under Section 139 of the Negotiable Instruments Act would support the Respondent. It is submitted that Trial Court is justified in rejecting the Application Exhibit - 12 and the Petitioner is dodging the claim. He has placed reliance on the judgment rendered by the Division Bench of this Court.

8. I have perused the plaint, which unequivocally states that on 16.11.2024 cash of Rs.3,00,000/- and on 22.11.2024 cash of Rs.3,00,000/- was paid by the Respondent to the Petitioner as a hand loan. In lieu of the hand loan, a non-CTS cheque dated 07.12.2024 is stated to have been secured from the Petitioner. The correspondence

dated 13.08.2025 addressed by Bank of India to the Petitioner would indicate that in pursuance of her request, cheque books were issued in the year 2009.

9. I find that probable and triable defense has been raised by the Petitioner that the cheque which was issued way back in the year 2009 has been used by the Respondent. It is the case of the Petitioner that Respondent was Chairman of the Shahu Corner Co-operative Credit Society from which the Petitioner had obtained loan and the cheque was issued towards security. The documents produced by the Petitioner would constitute *prima facie* plea of defense.

10. In view of the material on record, I am of the considered view that the defense raised is available and needs to be tested during the course of trial. The finding recorded by the Trial Court that no evidence was produced is *ex-facie* illegal and perverse.

11. It is overlooked by the learned Judge that matter is at the stage of the pleadings and the party is not expected to lead evidence to disclose the defense. There is sufficient material to indicate that triable and plausible defense is available for the Petitioner. The Trial Court exceeded in its jurisdiction in expecting the Petitioner to furnish the material particulars of her earlier transaction with the Cooperative Society. It would be a matter of objective scrutiny during trial.

12. The submissions of the Respondent as to whether any complaint

could have been made by the Petitioner for return of the cheque or the presumption available under Section 139 of Negotiable Instruments Act, 1881, can be tested during the course of trial.

13. Learned Counsel for the Petitioner has relied upon the judgment of the Learned Single Judge of Delhi High Court in the case of ***Mahesh Kumar Wadhwa Versus Bimal Luthra***¹ to buttress that if the summary suit is filed on the basis of cash transaction, then that would be the ground to grant leave to defend. In that matter also, cash of Rs.14,55,000/- and further Rs.4,75,000/- was advanced and the defendant had sought leave to defend the summary suit. The leave was granted by making following observations which are also relevant to decide controversy involved in the present case:

“7. *****

A. *****

B. *****

C. *****

D. There is also no explanation as to why such large sums of monies were transacted in cash.

E. The plaintiff has not filed a single document to show the availability of cash in such large volume with him on the dates alleged.

F A party who transacts in such casual manner, does so at his own peril. The purport of Order 37 is to provide benefit of summary procedure to plaintiffs who take care to have their transactions properly documented in accordance with law. The summary procedure is intended to encourage due recording /documentation in the course of trade/commerce. A person who while lending / advancing money makes a proper valid bill of exchange hundi, promissory note or a contract was intended to be bestowed advantage of quicker recovery of money without protracted trial. A party to avail of such significant benefit ought to take care in the making and execution of the document and lend money by cheque only, so as to eliminate defences of denial. The abridgement of procedure of trial for

1 2009 (107) DRJ 271.

adjudication of factual disputes in Order 37 is an exception and cannot be extended to cases where the document itself is suspect or leaves scope for denial of receipt of money. The banking sector has developed immensely in the country over the years, with all having access to the banks. In these modern times transactions in large sums of monies, in cash and through non banking channels will always remain open to challenge and cannot claim preference in procedure for adjudication. To hold otherwise would be to give encouragement to such transactions, which otherwise need to be curbed. With the introduction of Section 138 in the Negotiable Instruments Act, judicial notice can be taken of the fact that normally post dated cheques in refund of monies lent/advanced are taken. Even if the plaintiff was lending money in cash, the plaintiff in the normal course would have been expected to take cheques for refund. All these circumstances in the present case lead me to the conclusion aforesaid. Nothing said here should however be understood as laying down that Order 37 CPC would not be applicable wherever transaction is in cash. If the cash is explained and supported by other documents, action would lie. However, in this case notwithstanding specific plea in leave to defend application that the plaintiff had no means and had not disclosed the said monies in his income tax returns, the plaintiff has in his reply evaded answering the said pleas and also not filed any document to controvert the same. There cannot be two stands permitted to any party, one for purposes of taxation and other for litigation.

G. *****

H. *****

I. *****”

14. The learned Judge had granted unconditional leave. I propose to adopt the same course in the present case. Further reliance is placed on the judgment of Hon’ble Supreme Court in the matter of ***B. L. Kashyap & Sons Limited Versus JMS Steels & Power Corporation & Anr.***². I have gone through the various principles deduced from the judgments of the Supreme Court quoted in Para No. 32. It is relevant to reiterate Para 33 which is as follows:

² (2022) 3 Supreme Court Cases 294.

“33. It is at once clear that even though in IDBI Trusteeship, this Court has observed that the principles stated in para 8 of Mechelec Engineers case shall stand superseded in the wake of amendment of Rule 3 of Order 37 but, on the core theme, the principles remain the same that grant of leave to defend (with or without conditions) is the ordinary rule; and denial of leave to defend is an exception. Putting it in other words, generally, the prayer for leave to defend is to be denied in such cases where the defendant has practically no defence and is unable to give out even a semblance of triable issues before the court.”

The principles are squarely applicable to the present case.

15. The Counsel for the Respondent has relied on the judgment of the Division Bench of the Bombay High Court in the case of ***Rajesh Laxmichand Udeshi@Bhatia Versus Pravin Hiralal Shah***³ and specifically on paragraph Nos.17 and 18 of the judgment. I have gone through paragraph Nos.17 and 18 of the judgment. The facts of the case before the Division Bench are distinguishable. In the case at hand, the cash transaction has come to the fore and I have already observed that there exists *prima facie* material to make out the probable defense.

16. Its a fit case to grant unconditional leave to defend the suit. The respondent is claiming recovery of sum advanced to the petitioner in cash. My attention is adverted to the judgment of the Hon’ble Supreme Court in the matter of ***Correspondence, RBANMS Educational Institution Versus B. Gunashekar and Another***⁴. The Hon’ble Apex Court has referred to the policy of the Central Government to cap cash transactions and move forward towards a digital economy to curb the

3 2012 SCC OnLine Bom 2181.

4 2025 SCC OnLine SC 793.

dark economy. In paragraph No.18.1, the amendment brought into force from 01.04.2017 is referred to, indicating the restrictions for cash transactions over the prescribed limit and the proposed action against the same. The applicability of the amendment needs to be gone into during the course of trial. Hence, I am of the considered view that if the plea of the petitioner is accepted, the suit would be liable to be dismissed.

17. Considering overall conspectus of the matter, I am of the considered view that Petitioner is not only entitled to leave but entitled to unconditional leave to defend the summary suit. The Trial Court's order is unsustainable. I therefore pass following order:

::ORDER::

- A.** The Writ Petition is partly allowed;
- B.** The order dated 23.07.2026 passed below Exhibit - 12 in Summary Suit No. 2 of 2025 is quashed and set aside and the Application Exhibit - 12 stands allowed granting unconditional leave to defend the suit.

[SHAILESH P. BRAHME, J.]