IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1066 OF 2015

Shri. Prakash Shamrao Jamdade .. Petitioner
Versus
Shri. Avinash Bandu Kandhare .. Respondent

Mr. D. J. Dalal, for the Petitioner.
Mr. K. U. Nikam, for the Respondent.

CORAM : R.M. SAVANT, J.
DATE : 07th SEPTEMBER, 2015

P.C.

1. The Writ Jurisdiction of this Court is invoked against the order dated 01.11.2014 passed by the 2nd Joint Civil Judge, Senior Division, Pune, by which order conditional leave granted to the Petitioner on the basis that he furnishes Bank Guarantee in the sum of Rs.5,00,000/- and files written statement within one month. The suit in question has been filed by the Respondent/original Plaintiff claiming an amount of Rs.5,90,000/-. However, in so far as the principal amount is concerned, the same is Rs.5,00,000/- on which interest is claimed from the date of the filing of the suit till payment. The suit is founded on the fact that the Plaintiff had advanced friendly loan of Rs.5,00,000/- which the Defendant i.e. the Petitioner herein is not repaying. In the said suit, the Plaintiff

applied for summons for judgment. On the summons being received, the Defendant i.e. the Petitioner herein filed an application for leave to defend. The said leave was inter-alia sought on the ground of denial of the execution of the promissory note in the sum of Rs.5,00,000/- in favour of the Plaintiff by the Defendant, that the suit is not filed in terms of Order 37 of the CPC and that having regard to the transaction, the same is hit by the Bombay Money Lenders Act, 1946. The said application for leave to defend was opposed on behalf of the Plaintiff and it was contended that the said defences raised were sham and bogus. It was contended that the provisions of the Money Lenders Act did not apply as the transaction in question is not a transaction wherein the Defendant was required to pay any interest to the Plaintiff and what was sought was recovery of the hand loan i.e. friendly loan which was extended by the Plaintiff to the Defendant. The Trial Court as indicated above, by the impugned order has granted conditional leave.

2. The Learned Counsel appearing for the Petitioner Mr. D. J. Dalal sought to reiterate the case of the Petitioner/original Defendant before the Trial in so far as the three contentions are concerned. It was the submission of the Learned Counsel that the suit in question has not been filed in terms of Order XXXVII Rule 2 of the CPC that the Defendant has denied the execution of the said promissory note and that the transaction

in question would come within the ambit of the Money Lenders Act.

3. Per contra, Mr. K. U. Nikam the Learned Counsel appearing for the Respondent i.e. the original Plaintiff would support the impugned order and would contend that the order passed by the Trial Court granting conditional leave requires no interference in the facts of the present case.

4. In my view, it is not possible to accept the contentions urged on behalf of the Petitioner. In so far as the suit is concerned, it is required to be noted that in the cause title itself, it is mentioned that the suit is filed under Order XXXVII Rule 1 and 2 of the CPC. In so far as the execution of the promissory note is concerned, beyond the bare denial the Defendant has not given any plausible reason as to why his theory that the said promissory note has not been executed by him should be accepted. In so far as the last contention that the applicability of the Money Lenders Act, a reading of the definition of loan in Section 2(g) Clauses (f1) and (f2) would disclose that the instant transaction would not qualify as loan within the meaning of the said Act, as admittedly there is no agreement in respect of the payment of interest and that it is not the case of the Defendant that he has paid any interest till the filing of the suit. As indicated above, the suit is founded on the fact that a friendly loan which was advanced by the Plaintiff has not been repaid, in my view, therefore,

no case for interference with the impugned order is made out. The Writ Petition is accordingly dismissed. However, the time to furnish the Bank Guarantee is extended by two weeks from date. No further extension would be granted.

[R.M. SAVANT, J]

Certified to be true and correct copy of the original signed order.