

3. This Revision Application impugns the order dated 06/01/2015 made by the City Civil Court, Mumbai, granting Petitioner conditional leave to defend the suit, subject to deposit of the sum of Rs.45,74,716/- within the time fixed by the Court.

4. Mr. Saraogi, learned Advocate for Revision Applicant, made the following submissions in respect of the Revision Application :-

- a) That the Defendant No.2 in the present case, which has been described as a proprietary concern, is not a legal entity and therefore there is no question of a suit being maintained against it;
- b) That the Defendant No.3 in the present case has been described as the Director of Defendant No.1 company. Perusal of the plaint would indicate that there are no allegations which would make out any case of any liability as against the Defendant No.1 company. In any case, the Defendant No.3 can never be held as vicariously liable for the liability of the Defendant No.1 company, if any;
- c) The suit as filed, is incompetent for mis-joinder of causes of action. Necessary leave under the Letters Patent has not been obtained for joinder of separate and distinct alleged causes of action;
- d) The summary suit is based substantially upon certain dishonoured cheques. Two cheques in same cases, bear the signature of Respondent No.7, who has no concern

with either Defendant No.1 or Defendant No.2. In other cases, the cheques bear the signatures of Defendant No.3, in his purported capacity as Proprietor of Defendant No.2. All these circumstances, raise triable issue and therefore this was not a case for grant of conditional leave;

- e) That the present suit was instituted in the year 2008. Summons for Judgment was taken out only in the year 2014. In view of such inordinate delay, no purpose would be served in denying unconditional leave;
- f) There are no allegations that the Defendant No.3 was guarantor to the transaction between Plaintiff and the Defendant No.2. The Defendant No.3 has not been sued in the capacity as Proprietor of Defendant No.2. This, by itself, raises triable issue;
- g) Finally, at least *prima-facie* it is clear that the dishonour of cheques was on date prior to the publication of advertisements. There is no clear material that advertisements were at all published. This action raises a triable issue.

5. The impugned order, by which conditional leave as aforesaid came to be granted, records that Plaintiffs are in a business of publication of advertisements between the period 16/06/2014 to 31/07/2014. Necessary bills were issued and in satisfaction thereof, cheques were handed over by the Defendants. The cheques were ultimately dishonoured. The impugned order also records that several

criminal cases are pending against the Defendants.

6. The impugned order, makes reference to only one defence raised by and on behalf of the Defendants. The defence is that by a Memorandum of Understanding, the Defendants and the Plaintiffs had come to some sort of an agreement. The impugned order however records that even the first cheque of Rs.1,00,000/-, in pursuance to the MoU, was dishonoured. In the light of such facts and circumstances, the impugned order records that the defence raised by and on behalf of the Defendants is in the nature of a moonshine.

7. In this Court, although a host full of contentions have been raised by the Petitioner, who are original Defendant Nos.2 and 3, in my judgment, the same are by no means sufficient to persuade me to exercise revisional jurisdiction. There is no substance in the contentions. The provisions contained in Order 30 Rule 10 of the CPC permit the institution of a suit against any person under his firm name. Besides, there is on record material which suggests that Defendant No.3 is indeed the Proprietor of Defendant No.2. Initially, this position was denied, and the entire liability was sought to be apportioned upon Defendant No.7 who is said to be absconding. In the initial Affidavit-in-reply opposing the grant of Summons for Judgment, necessary particulars were not disclosed. Subsequently, upon better particulars being sought for, certain facts and circumstances were placed on record. The Plaintiff was required to amend the plaint in the light of such responses. It is for this reason

that there was some delay in taking out of the Summons for Judgment on the basis of which the impugned order has been made. The material on record, clearly brings about the position that it is at the behest of the Defendants that the advertisements were published and further towards publication of such advertisements, cheques were issued from time to time. There is material on record which suggests that Defendant No.7 was an employee of either Defendant No.1 or Defendant No.2. The Defendant No.1 has not challenged the impugned order. If relying upon such material, conditional leave to defend has been granted, it cannot be said that the City Civil Court has either exceeded its jurisdiction or exercised its jurisdiction with any material irregularity. It is not really a case where substantial triable issues have been raised, which warrant the grant of unconditional leave to defend. In any case, the impugned order does not decrees a suit, but grants conditional leave. Therefore, if the amounts as directed are deposited, the Petitioners will be at liberty to establish their defence.

8. For the aforesaid reasons, there is no reason to interfere with the impugned order. The Revision Application is accordingly dismissed.

9. In view of the dismissal of the Revision Application, the Civil Application does not survive and the same is also disposed of.

10. At this stage, Mr. Saraogi, learned Advocate for Applicants, seeks stay of six weeks, as the Applicants would like to take recourse against this order before the Hon'ble Apex Court. Accordingly, stay for a period of six weeks from today is granted.

(M. S. SONAK, J.)