

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5991 OF 2015**

Smt. A.V. Mohite wd/o late V. Mohite	)	
Age 65, Occupation: Housewife	)	
An adult Indian Inhabitant, residing	)	
At Sunil Niwas, B Building, Flat No.36	)	
3 rd floor, Lokhandwala Complex Road,	)	
Near Gyan Kendra School, Four Bunglows,	)	
Andheri (West) Mumbai 400 058	)	..Petitioner

Vs.

Deepak Dhayalal Waghela	)	
Aged 32 years, Occ Business	)	
Indian Inhabitant of Bombay	)	
2/207, Nalanda Niwas, Elphiston Road,	)	
Mumbai 400 013	)	..Respondent

Mr. Rajendra Megh for the Petitioner
Mr. H. R. Pawar for the Respondent

CORAM : R. M. SAVANT, J.
DATE : 24th AUGUST, 2015

ORAL JUDGMENT

1 At the outset, the above Petition to be detagged from Writ Petition Nos.5983 of 2015 and Writ Petition No.6128 of 2015 as the above Writ Petition is not connected with the said Writ Petitions.

2 Rule. With the consent of the Learned Counsel for the parties

made returnable forthwith and heard.

3 The Writ Jurisdiction of this Court is invoked against the order dated 13-2-2015 passed by the Learned Judge of the City Civil Court, Bombay, by which order, leave to defend was granted to the Defendant i.e. the Petitioner herein on condition of deposit of Rs.1 lacs towards the security within two weeks from the date of the order. The Summary Suit is founded on the two cheques allegedly issued by the husband of the Petitioner in favour of the original Plaintiff i.e. the Respondent herein the amount covered by the said two cheques is Rs.2,25,000/- and according to the Plaintiff the said amount covered by the cheques have been given as and by way of friendly loan to the husband of the Petitioner. After the death of husband of the Petitioner the Suit in question was originally filed in this Court as a Summary Suit under Order XXXVII of the Civil Procedure Code and on the pecuniary jurisdiction of the City Civil Court, Bombay being enhanced, the Suit came to be transferred to the City Civil Court, Bombay. On the Summons for Judgment being served upon the Petitioner, the Petitioner filed an application seeking leave to defend the Suit and the application was inter alia founded on the case of the Petitioner that the said two cheques were bogus and that though the cheques were dated 28-7-2002 the Suit was filed in the year 2006 and therefore beyond the period of limitation prescribed for a suit for recovery of money.

4 The Trial Court considered the said application for leave to defend filed by the Petitioner and has by the impugned order granted conditional leave by directing the Petitioner to deposit an amount of Rs.1 lower Appellate Court as security. The question that is therefore posed is whether the Petitioner herein is entitled to unconditional leave as prayed by her in the application and is sought to be contended by the Learned Counsel for the Petitioner in this Court. In the said context, it is required to be noted that the Suit in question is filed after the husband of the Petitioner has expired. The Petitioner questions the two cheques on the ground that they are bogus and also questions filing of the Suit as being barred by limitation, since the period of 3 years has already elapsed after the cheques were issued. It is also required to be noted that the Trial Court from a reading of the impugned order does not seem to have been impressed by the case of the Plaintiff, in so far as the claim made by the Petitioner for unconditional leave is concerned, it is probably for the said reason that the Trial Court directed the deposit of Rs.1 lacs inspite of the amount covered by the cheques being Rs.2.25 lacs.

5 In my view, having regard to the case of the Petitioner that the said cheques on the basis of which the instant Summary Suit has been filed are bogus as also considering the fact that though the cheques are dated 28-7-2002, the Suit was filed in the year 2006, triable issues therefore arise in the Suit is as regards the authenticity of the cheques as also on the ground of

limitation. In my view therefore, the Trial Court has erred in putting the Petitioner / Defendant to terms by directing her to deposit an amount of Rs.1 lacs as security by the impugned order. The impugned order would therefore have to be quashed and set aside and is accordingly quashed and set aside and is substituted by the following order:

(i) The Petitioner /Defendant is granted unconditional leave to defend the Suit.

(ii) The Petitioner / Defendant to file her Written Statement within 12 weeks from date and the Trial Court may thereafter to proceed in accordance with law.

6 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]