IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St.NO.22530 OF 2015

M. V. Shekhara Rao **..Petitioner**
Vs.
Hanwantraj Anrajji Jain & Anr. **..Respondents**

Mr. N. N. Bhadrashete for the Petitioner

CORAM : R. M. SAVANT, J.
DATE : 9th SEPTEMBER, 2015

P.C.

1 The order dated 23-7-2015 passed by the Learned Judge of the City Civil Court, Mumbai, granting conditional leave to the Petitioner i.e. the original Defendant No.2 to the Suit in question is taken exception to by way of the above Petition.

2 The Suit in question being Summary Suit No.1566 of 2013 has been filed by the Respondents herein for recovery of Rs.15 lacs advanced as loan to the Defendants. The Defendant No.1 is a private limited company of which the Defendant No.2 according to the Plaintiff was a Director. The facts as deciphered from the pleadings disclose that an amount of Rs.12 lacs has been transferred to the account of the Defendants and that the Defendants have executed a promissory note of Rs.15 lacs which was inclusive of Rs.3 lacs to be paid as interest. The Trial Court having regard to the aforesaid facts held that

though the Defendants have raised triable issues in the light of the fact that the promissory note was executed by the Petitioner herein i.e. the Defendant No.2 that conditional leave would have to be granted on deposit of Rs.15 lacs.

3 The Learned Counsel for the Petitioner would contend that the Petitioner herein i.e. the Defendant No.2 has resigned as a Director in the year 2009 whereas the alleged loan has been disbursed in the year 2011. The next contention is that the signature of the Defendant No.2 has been misused by the General Manager of the Defendant No.1 and lastly it is sought to be contended that the promissory note concerned having regard to the contents thereof cannot be said to be a promissory note.

4 In my view, it is not possible to accept the said contentions as in the instant case, the conditional leave is granted on the basis that a promissory note has been executed by the Defendant No.2 in favour of the Plaintiff in view of the loan advanced of Rs.12 lacs. The contentions which the Petitioner / Defendant No.2 seeks to raise can obviously be a subject matter of the trial. It is in view thereof that the court has granted conditional leave on deposit of the amount. In my view therefore, the impugned order passed by the Trial Court cannot said to suffer from any error or any other illegality or infirmity for this Court to interdict in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

5 However, time to deposit the amount as and by way of final indulgence is extended by a period of two weeks from date. No further extension would granted.

[R.M.SAVANT, J]

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