

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8820 OF 2015

Shri. Dinesh Vanvir Shah

.. Petitioner

Versus

Shri. Chandresh Dinesh Gala

.. Respondent

Mr. Yogendra Kanchan & Mr. Amol V. Kumeria, for the Petitioner.

Mr. Anil Agarwal, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 07th SEPTEMBER, 2015

PC.

1. The order dated 27.07.2015 passed by the Learned Judge of the City Civil Court, Bombay, granting conditional leave to the Petitioner/original Defendant is taken exception to by way of the above Petition. The Respondent herein is the original Plaintiff who has filed the suit in question for recovery of an amount of Rs.5,17,422/- which was the balance remaining for the goods supplied to the Defendant. The suit is founded on the fact that the cheques amounting to an amount of Rs.3,75,000/- issued by the Petitioner/original Defendant in favour of the Plaintiff was dishonored. It appears that out of the various cheques which have been issued for the goods supplied, the cheque for an amount of Rs.50,000/- has been en-cashed. On the summons for judgment being

served upon the Petitioner, the Petitioner applied for leave to defend and the defence taken was of questioning the transaction as also the issuance of cheques which according to the Petitioner was on the basis of threats issued by anti social elements. It appears that in so far as the threats are concerned, there is a solitary letter addressed to the Police in the year 2010 and in fact the goods have been supplied thereafter as also cheques have been issued by the Plaintiff thereafter. The Trial Court having regard to the fact that there was no dispute as regards the cheques issued by the Defendant in favour of the Plaintiff for the said amount of Rs.3,75,000/- granted conditional leave on the condition that the Defendant deposits said amount of Rs.3,75,000/- within a period of six weeks of the said order, which period is expiring today. The Trial Court has observed in the order that the Defendant has raised a substantial defence. The same can only be said to be a general observation made by the Trial Court having regard to the defences raised by the Defendant in the application for leave to defend, as the Trial Court has thereafter on the ground that there is no dispute as regards issuance of amount to the extent of Rs.3,75,000/- has granted conditional leave on the ground of deposit of the said amount. The Learned Counsel for the Petitioner Mr. Yogendra Kanchan sought to reiterate the case of the Petitioner/original Defendant in the Trial Court and sought to contend that the cheques were issued under threat and

coercion. In my view, that aspect can be gone into at the trial of the suit. However, having regard to the undisputed position as regards issuance of the cheques for an amount of Rs.3,75,000/- order granting conditional leave to the Defendant on the deposit of the said amount cannot be faulted with. No case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed. The time to deposit the amount is extended by a period of two weeks from date.

[R.M. SAVANT, J]

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