

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9956 OF 2010

Vijay Vasant Angne	..	Petitioner
vs.		
Dr. Vijay N. Deshpande & Ors.	..	Respondents

Mr. D. S. Chandnani i/b. Lexim Associates for Petitioner.
Mr. Rajesh S. Datar for Respondent Nos. 1 and 2.
Mr. Vivek Kantawala for Respondent No. 3.

CORAM : M. S. SONAK, J.
DATE: 30 MARCH 2015

P.C. :-

1] This petition challenges the order dated 24 September 2009, by which the 6th Jt. Civil Judge, Senior Division, Thane, has granted the respondents unconditional leave to defend the purported summary suit.

2] The learned counsel for the petitioner contended that there is material on record which indicates that the defendant No. 3 has admitted that the petitioner had paid certain amounts to the defendant no. 3 in order to discharge the liability of defendant nos. 1 and 2. The learned counsel for the petitioner submits that this admission coupled with certain cheques which were issued by the defendant nos. 1 and 2 and which cheques were subsequently dishonoured, are sufficient circumstances to deny the defendants

unconditional leave. The learned counsel for the petitioner submits that this was a fit case where at least conditional leave to defend ought to have been granted in the matter.

3] Having heard the learned counsel for the parties and perused the record, in my judgment, there is no case made out to interfere with the impugned order. If the plaint is perused, then at least prima facie it does not comply with the requirements contained in Order 37 of the CPC. Besides, the so-called admission by the original defendant no. 3, cannot be an admission qua the remaining two respondents i.e. the defendant nos. 1 and 2. Further, if the prayer clauses are perused, then the petitioner, apart from seeking relief of declaration, has not sought for any clear reliefs as against the defendant nos. 1 and 2. Most of the reliefs, pertain to the defendant no. 3 and seek restraint upon the defendant no. 3 from recovering any amounts from the petitioner.

4] The learned Civil Judge, has referred to the defences raised on behalf of the defendants and has come to the conclusion that the defences as raised give rise to triable issues. It is well settled that in matters of such type, unless the defences raised are in the nature of moon shine, ordinarily, leave to defend should not be refused.

5] Upon cumulative consideration of the aforesaid circumstances, in the facts and circumstances of the present case, it cannot be said that defences raised by the defendants are in the nature of a complete moon shine. Accordingly, there is no jurisdictional error in making of the impugned order.

6] This petition is dismissed. There shall be no order as to costs.

7] It is made clear that this Court has not examined merits of the matter and any observations in the impugned order or for that matter the present order ought not to influence the learned Civil Judge whilst deciding the suit, in pursuance of unconditional leave to defend being granted in favour of the original defendants.

8] Further, considering that the suit relates to the year 2007, there is justification in the request made by the learned counsel for the petitioner that some directions be issued in the matter of its expeditious disposal. Accordingly, learned Civil Judge, is directed to decide the suit expeditiously and in any case within a period of one year from today.

(M. S. SONAK, J.)