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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 8 OF 2015

Dr.Bhargav Jayantilal Bhatt	...	Applicant
Vs.		
Mr.Kaushik Sharad Shah	...	Respondent

**ALONG WITH
CIVIL REVISION APPLICATION NO. 9 OF 2015**

Mrs.Sadhana Bhargav Bhatt	..	Applicant
Vs.		
Mr.Kaushik Sharad Shah	...	Respondent

**ALONG WITH
CIVIL REVISION APPLICATION NO. 10 OF 2015**

Mr.Siddharth Bhargav Bhatt	..	Applicant
Vs.		
Mr.Kaushik Sharad Shah	...	Respondent

Mr.Harish Bhatia, Advocate for Applicants.
Mr.Sean Wassoodew, Advocate for Respondent.

CORAM : R. G. KETKAR, J.
DATE : 17th AUGUST, 2015

P.C. :

1. Heard Mr.Harish Bhatia, learned Counsel for the applicants and Mr.Sean Wassoodew, learned Counsel for the respondent at length.

2. By these Applications under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original plaintiff has challenged the judgment and orders dated 03/09/2014 passed by the learned Judge, City Civil Court at Greater Bombay in Summons for

Judgment. By these orders, the learned trial Judge granted unconditional leave to defend the Suit.

3. Since common questions of law and facts arise in these Applications, the same can conveniently be disposed of by this common order. For the purpose of appreciating the controversy raised between the parties, facts from Civil Revision Application No. 8 of 2015 are taken into consideration.

4. In support of these Applications, Mr.Bhatia submitted that the plaintiff had advanced sum of Rs. 1,50,000/- to the defendant on 01/04/1995. The defendant had agreed to repay the said loan with interest at the rate of 24% per annum. He submitted that as on 31/12/2009 the defendant was liable to pay Rs.13,57,000/-. He submitted that in paragraph 15 of Plaint in Summary Suit No.55/438 of 2010 the plaintiff specifically asserted that defendant had issued acknowledgement and confirmation of the loan and further loan confirmation letters to the plaintiff from time to time narrating the facts but the whole bunch of loan confirmation letters was lost by the plaintiff. The defendant issued fresh loan confirmation letter in the form of affidavit cum confirmation dated 02/01/2009. He further submitted that in pursuance of the confirmation letter defendant had issued cheque in the sum of Rs. 13,57,000/- on 01/01/2010 which was dishonoured on 05/01/2010. He submitted that the learned trial Judge accepted the defence that

the confirmation letter relied by the plaintiff is forged document and his cheque book was misplaced. He had filed noncognizable complaint in the police station on 30/12/2009. The defendant also alleged that the cheques relied by the plaintiffs are forged document. The learned trial Judge granted unconditional leave to defend the suit as also disposed of summons for Judgment. He submitted that on 22/01/2010, respondent-defendant replied to the notice dated 08/01/2010 issued by the plaintiff. In paragraph 2 of the reply, defendant alleged that he had misplaced cheque book containing cheques including one allegedly issued to the plaintiff. The defendant gave notice to the Grater Bombay Co-operative Bank intimating the loss of the cheque book and not to honour any cheque from the said cheque book. The defendant had also lodged complaint in the police station regarding loss of the said cheque book. It was further alleged that plaintiff had either found or procured the lost cheque book and had forged defendant's signature thereon with a view to fraudulently withdrawing money from the said account.

5. Mr.Bhatia submitted that on one hand, defendant has alleged in paragraph 4 of the affidavit of examination-in-chief dated 01/11/2012 that plaintiff has forged defendant's signature, on the other, during cross examination in C.C.No. 1338/SS/2008, the defendant admitted that in the disputed cheque, other contents

except his significance are not in his handwriting. In other words, defendant admitted the signature on the disputed cheques. He, therefore, submitted that the learned trial Judge was not justified in granting unconditional leave to defend the Suit. The learned trial Judge ought to have put the defendant to some terms.

6. On the other hand, Mr. Wassoodew supported the impugned order. He submitted that after passing of the impugned order, defendant has filed written statement. The learned trial Judge has framed the necessary issues. The plaintiff has filed affidavit of evidence as also compilation of the documents. The plaintiff has thereafter filed application for sending the signature on the disputed cheques for the opinion of the handwriting expert. He, therefore, submitted that in view of the subsequent development, no case is made out for invocation of powers under Section 115 of C.P.C, more so when the learned trial Judge has recorded a finding in paragraph 4 that several triable issues emerge from the contention of the parties. The learned trial Judge also relied upon the decision of the Apex Court in the case of *Mechelec Engineers Vs. M/s.Basic Equipment Corporation*, **AIR 1977 SC 577**.

7. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph 5 of the impugned order, the learned trial Judge has observed that issue of limitation also needs to

be looked into because loan was allegedly given on 01/04/1995 and confirmation letter relied upon by the plaintiff is dated 02/01/2009.

8. In the case of **Mechelec Engineers** (*supra*), the Apex Court has laid down the guidelines to be followed while considering application for granting leave to defend. The Apex Court also held that the order is in discretionary in nature. In view thereof as also having regard to the fact that after the impugned order, defendant has filed written statement, issues are also framed by the learned trial Judge and that plaintiff has filed affidavit of evidence as also compilation of the documents and has further filed application for sending disputed cheques for the opinion of the handwriting expert, I do not find that this is a fit case for invocation of powers under Section 115 of C.P.C. Hence, Applications fail and the same are dismissed. Order accordingly.

(R. G. KETKAR, J.)