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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4319 OF 2016

1. Education Solution, Proprietary ship firm PETITIONERS
Its Registered office at
'Tapaswini Compound'
Chinchwad, District - Pune - 411 019
Through its Proprietor
2. Shri Kedarsing R. Tapaswi,
Age - 56 years, Occ - Business,
R/o As above

VERSUS

Shri Sudhakar Bhagwan Chaudhari RESPONDENTS
Age - 73 years, Occ - retired
R/o 'Yashodhan' Plot No.6
Yeshwant Colony, Ring Road,
Jalgaon, District - Jalgaon

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Mr. G. V. Wani, Advocate for the petitioners
Mr. A. P. Bhandari, Advocate for respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 15th APRIL, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. The petitioners, who are original defendants, aggrieved by order dated 3rd March, 2016 whereunder request of present

petitioners - defendants to grant leave to defend the suit has been granted, on the condition of furnishing security for the amount of Rs.48,50,000/- in the form of bank guarantee.

3. Learned advocate for the petitioners submits that this is onerous condition being put. As a matter of fact about Rs. 18,50,000/- have already been deposited under the orders of this Court in writ petition No.3124 of 2015. Total transaction appears to be of Rs.66,00,000/-, whereas contention of present respondent appears to be that not a single farthing of said amount had been paid and accordingly the suit, with reference to certain cheques has been instituted. Simultaneously, proceedings for dishonour of cheques are being prosecuted.

4. In the suit the defendants requested for condonation of delay in seeking leave to defend, which had been rejected and accordingly they had been in writ petition No.3124 of 2015 wherein order had been passed.

5. Learned advocate for the petitioners submits that the petitioners are not possessed of so much of amount as on the date and that they have certain immovable properties, which are worth a crore and more. He, therefore, seeks indulgence of this court to replace condition of furnishing bank guarantee of

Rs.48,50,000/- by allowing them to furnish solvent security for said amount.

6. Learned advocate for the respondent, however, submits that it is a case of the petitioners that they have in fact paid an amount of Rs.48,50,000/-, yet they could not support the same by any *prima faice* material, at least at this stage and taking into account this the court had passed an order.

7. Learned advocate for the respondent, however, has been fair and reasonable in leaving it to this court to decide the matter in its discretion, of course with reference to the facts and circumstances of the case.

8. The petitioners contend that they have already paid an amount of Rs.18,50,000/-, pursuant to the order of this court and they are not possessed of so much of amount, in order to enable them to have bank guarantee of Rs.48,50,000/- as directed by the court. He further submits that the petitioners possess sufficient property, which would take care of the claim in the suit. In this view and considering the fact that the suit is for recovery of amount, I deem it appropriate that it would be in the interest of justice that the condition of furnishing bank guarantee for leave to defend be modified by following order.

9. Leave to defend the suit is granted to the defendants on furnishing bank guarantee for an amount of Rs.24,25,000/- and for rest of the amount of Rs.24,25,000/-, the petitioner shall furnish solvent security to the satisfaction of the trial court.

10. With aforesaid modification in clause 2 of the operative part of the impugned order, the writ petition stands disposed of. Rule is made absolute in aforesaid terms.

11. Having regard to aforesaid, the time to comply with the modified conditions stands extended by a further period of eight weeks from today.

12. The parties agree upon that the suit being summary in nature, the same may be disposed of as early as possible, preferably within a period of six weeks from the date of deposit of amount by the defendants.

[SUNIL P. DESHMUKH, J.]