

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION.168 OF 2016

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr.R.N.Sukhija for the applicant

Mr.Madhav J. Jamdar for the respondent

CORAM : K. K. TATED, J.

DATE : JULY 25, 2016

P.C.:

1 Heard the learned counsel for the parties.

2 By this Civil Revision Application applicant defendant challenges the order dated 16.10.2015 passed by 2nd Joint Civil Judge, Senior Division, Pune below Exhibit-17 in Special Summary Suit No.123 of 2014 directing applicant defendant to furnish bank guarantee for sum of Rs.8,20,660/- within one month to defend the suit filed by respondent plaintiff.

3 Bare reading of the order shows that court has granted conditional leave to the defendant to defend the suit only on the ground that defendant himself admitted payment of Rs.8,20,660/- in his written statement in paragraph 7.

4 The learned counsel for the applicant

defendant submits that Trial Court erred in coming to the conclusion that defendant admitted claim to the extent of Rs.8,20,660/-. He submits that the said amount was paid to the respondent plaintiff in cash. Those facts were not considered by the Trial Court at the time of passing impugned order.

5 The learned counsel for the applicant defendant further submits that there is no provision in invoice for payment of interest and or penalty @ 2%. Same was claimed by the plaintiff at the time of filing the Suit. Hence, Summary Suit is not maintainable.

6 The learned counsel for the defendant submits that though Trial Court in its impugned order dated 16.10.2015 held that defendant has made out a case for triable issue inspite of that court has directed plaintiff to furnish bank guarantee. Hence, impugned order is required to be set aside.

7 It is to be noted that Trial Court passed conditional order on the basis of written statement filed by the defendant wherein in paragraph 7 he admitted liability to the extent of Rs.8,20,660/-. Whether the summary suit is maintainable or not, that can be decided only at the stage of final hearing.

8 In view of admission given by the defendant in his written statement about his liability, I do not find any substance in the Civil Revision

Application. Hence, Civil Revision Application stands rejected.

JUDGE