

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

WRIT PETITION NO.624 OF 2014

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| 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.Ram U. Singh for the petitioner

Mr.Bhaskar Sarwade for the respondent nos.1 to 3

**CORAM : K. K. TATED, J.**

**DATE : JULY 11, 2016**

**P.C.:**

1 Heard the learned counsel for the parties.

2 By this Petition under Article 227 of Constitution of India, the petitioner defendant challenges the order dated 30.11.2013 passed by Bombay City Civil Court at Bombay in Summons for Judgment No.212 of 2011 in Summary Suit No.3799 of 2010 granting conditional leave to the defendant to defend Summary Suit on deposit of Rs.6 lakhs in court.

3 The learned counsel for the defendant submits that in the present proceeding, respondent plaintiff filed Summary Suit on the basis of dishonoured cheque of Rs.7 lakhs bearing No.937579 drawn on Corporation Bank, Santacruz

(East), Mumbai dated 18.1.2010. He submits that the plaintiff also preferred Summons for Judgment No.212 of 2011 for Rs.7 lakhs only. He submits that the Trial Court at the time of passing impugned order dated 30.11.2013, considered the facts of another matter which was filed by the plaintiff for recovery of sum of Rs.6 lakhs. He submits that Trial Court passed impugned order dated 30.11.2013 on the basis that plaintiff filed Summary Suit for recovery of Rs.6 lakhs on the basis of dishonour cheque dated 26.1.2010.

4 The learned counsel for the petitioner submits that considering these facts this Hon'ble Court be pleased to set aside the impugned order dated 30.11.2013 remanding the matter to the Trial Court to decide afresh.

5 On the other hand, the learned counsel for the respondent plaintiff also not disputed these facts. He also submits that plaintiff filed Summary Suit No.3799 of 2010 on the basis of cheque bearing no.937579 dated 18.1.2010 for Rs.7 lakhs whereas Trial Court has considered another cheque of Rs.6 lakhs.

6 Considering the submissions made by the learned counsel for the petitioner and after perusing impugned order as well as copy of plaint filed by the plaintiff and as advocate for

respondent plaintiff also not disputed these facts, I am satisfied that petitioner has made out a case for setting aside impugned order dated 30.11.2013 in Summons for Judgment No.212 of 2011 and to remand the matter to the Trial Court for afresh hearing. Hence, following order is passed:

- a) Impugned order dated 30.11.2013 passed by Bombay City Civil Court at Bombay in Summons for Judgment No.212 of 2011 in Summary Suit No.3799 of 2010 is set aside.
  - b) Summons for Judgment No.212 of 2011 in Summary Suit No.3799 of 2010 is remanded to the Trial Court for afresh hearing after giving a chance to both the sides to file additional pleading if any.
  - c) Hearing of Summons for Judgment No.212 of 2011 be completed as early as possible on or before 31.12.2016.
  - d) Writ Petition stands disposed of accordingly.
- No order as to costs.

JUDGE