

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

WRIT PETITION NO. 7458 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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None for the Petitioner.

Later on,

Mr. Ashok Mishra for petitioner.

Mrs. Rekha Shinde i/b Legal Charter for respondent.

CORAM : K. K. TATED, J.

DATED : 11/08/2016

PC.:

. When the matter called out, no one appeared on behalf of petitioner. Hence, dismissed for default.

Later on,

Mr. Ashok Mishra for petitioner mentioned the matter.

2 Heard learned counsel for the parties.

3 By this petition under Article 227 of the Constitution of India, the petitioner defendant challenges order dated 06.02.2016 passed by Bombay City Civil Court at Mumbai in Summons for Judgment No. 257 of 2015 granting conditional leave to defendant to defend the Summary Suit No. 438 of 2015 on depositing sum of Rs.2,00,000/-.

4 In the present proceeding, the respondent plaintiff filed Summary Suit No. 438 of 2015 for

recovery of sum of Rs.2,40,000/- . It was the case of the plaintiff that at the request of defendant, plaintiff advanced a friendly loan. To that effect, the plaintiff executed writing dated 04.02.2011 and admitted his liability. Defendant also issued a cheque of Rs.2 lacs drawn on Abhyuday Co-op. Bank Limited to discharge the liability. That cheque was dishonoured by the Bank when the same was presented for encashment. As the Defendant failed and neglected to pay her dues, the plaintiff filed summary suit and preferred summons for judgment. The trial court considering the writing dated 04.02.2011 and dishonoured cheque of Rs.2 lacs, directed defendant to deposit sum of Rs.2 lacs for defending summary suit. Hence, present Writ Petition preferred by the defendant.

5 The learned counsel for the defendant submits that Court below erred in coming to the conclusion that the defendant failed to make out sufficient cause for unconditional leave to defend the summary suit. He submits that plaintiff by playing fraud on her obtained writing dated 04.02.2011 and cheque of Rs.2 lacs. He submits that the trial court has not considered these facts and directed defendant to deposit sum of Rs. 2 lacs to defend the summary suit. Hence, the impugned order is required to be set aside by granting unconditional

leave to the defendant to defend the summary suit on its own merits.

6 On the other hand, the learned counsel for the plaintiff vehemently opposed the present Writ Petition. She submits that the trial court after considering evidence on record particularly writing dated 04.02.2011 and dishonoured cheque of Rs.2 lacs, held that defendant can defend the summary suit by depositing sum of Rs.2 lacs. He submits that as impugned order was passed by the trial court on its own merits, there is no question of interfering the said order in present Writ Petition under Article 227 of the Constitution of India. Hence, Writ Petition is required to be dismissed with cost.

7 I heard both the sides at length. In the present proceeding, the plaintiff filed Summary Suit for recovery of Rs.2,40,000/- on the basis of writing dated 04.02.2011 and dishonoured cheque of Rs.2 lacs. As the plaintiff complied the statutory requirement for filing summary suit under Order 37 and the trial court after considering evidence on record i.e. writing dated 04.02.2011 and dishonoured cheque of Rs.2 lacs passed the impugned order, I do not find any reason to interfere with the said well reasoned order. Hence, Writ Petition stands rejected.

(K.K.TATED, J.)