

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 8017 OF 2015

RAMESHCHANDRA GOVIND GAVANKAR ...Petitioner

Versus

DEEPAK NEMCHAND SHAH ...Respondent

....

Ms.Anjali Helekar i/b. Subham Abhyankar, Advocate for the
Petitioner.

Mr. E.A. Sasi, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 28th MARCH, 2016

P.C.

1. Heard Ms. Anjali Helekar, learned Counsel for the
petitioner and Mr.E.A. Sasi, learned Counsel for the respondent,
at length.

2. Rule. Mr. Sasi waives service for the respondent. At
the request and by consent of the parties, Rule is made
returnable forthwith and the petition is taken up for final
hearing.

3. By this Petition under Article 227 of the Constitution of
India, the petitioner has challenged the judgment and order

dated 7.7.2015 by which the learned trial Judge granted conditional leave to defend to the petitioner, hereinafter referred to as the 'defendant', subject to depositing Rs.6,30,000/- within four weeks from the date of the order as also after depositing said amount permitted the defendant to file written statement within four weeks. After depositing the amount, the registry was directed to invest said amount in the Nationalized bank, initially for the period of one year and continue to renew the same for the like period until further orders. On failure of the defendant to deposit the amount within four weeks, the plaintiff was given liberty to apply for further reliefs.

4. The petitioner has also challenged the order dated 6.2.2016 by which the learned trial Judge directed the suit to proceed undefended. After arguing the petition for some time, Ms. Helekar upon taking telephonic instructions from the petitioner, states that the petitioner is not pressing prayer clause (a) of this petition if the time to deposit as ordered by the trial Court is extended. She states that within two weeks from today, the petitioner will deposit an amount of Rs.3,15,000/- in the trial Court, after after due intimation in writing to the Advocate

for the plaintiff. The petitioner will deposit the balance amount of Rs.3,15,000/- within four weeks from today in the trial Court, after due intimation in writing to the Advocate for the plaintiff. Ms. Helekar submits that the order dated 6.2.2016 may be set aside. She further assures that the petitioner will file written statement within four weeks from today and will give advance copy to the Advocate for the plaintiff.

5. Mr. Sasi states that as the suit was ordered to proceed undefended, the plaintiff has filed claim affidavit. He submits that in case the defendant is granted liberty to file written statement, the plaintiff may be permitted to withdraw the claim affidavit with liberty to file fresh claim affidavit. In view thereof, the Petition is disposed of in the following terms :

- [i] The petitioner shall deposit Rs.3,15,000/- in the trial Court within two weeks from today under due intimation in writing to the plaintiff's Advocate appearing in the trial Court.
- [ii] The petitioner shall deposit the balance of Rs.3,15,000/- within four weeks from today. The petitioner shall not

seek extension of time for depositing the amounts.

- [iii] The order dated 6.2.2016 is quashed and set aside. The petitioner shall file written statement within four weeks from today and serve copy in advance on the other side.
- [iv] List the petition for compliance after three weeks. It is made clear that if within two weeks from today the petitioner does not deposit Rs.3,15,000/-, the impugned order shall stand revived without reference to the Court.
- [v] The plaintiff is permitted to withdraw claim affidavit with liberty to file fresh claim affidavit/affidavit of evidence after the written statement is served upon him.
- [vi] Rule is partly made absolute with no order as to costs.

(R. G. KETKAR, J.)