

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

WRIT PETITION NO.2788/2015
WITH
CIVIL APPLICATION NO.756/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mr. M. S. Gandhare for the petitioner
Mr. Kuldeep V. Nikam for the respondent

CORAM : K. K. TATED, J.
DATE : JULY 18, 2016

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner defendant challenges the order dated 01.11.2014 passed by the 2nd Jt. Civil Judge, Senior Division, Pune below Exhibit- 9 in Special Summary Suit No.90/2013 granting conditional leave to defend the suit by furnishing bank guarantee of Rs.15 lacs.

2. The learned counsel for the defendant submits that in the present case the defendant was in need of money. Hence, he approached his close relative Mr. Ganesh B. Ghule in the month of January 2015 for Rs.20000/-. At that time, he gave some blank cheques to him towards security.

He submits that said Ganesh Ghule in collusion with the plaintiff manipulated those cheques and filed the Special Summary Suit No.90/2013 for recovery of Rs.15 lacs. He submits that the plaintiff in his plaint in paragraph 3 stated that the defendant approached the plaintiff for friendly loan of Rs.15 lacs and same was given by him in cash in the month of December 2011. He submits that the plaintiff has not placed on record any documentary evidence to show that the present suit covers by Order XXXVII Rule 2 of the Code of Civil Procedure, 1908. These facts were not considered by the Trial Court at the time of passing the impugned order dated 01.11.2014. He submits that in the interest of justice, this Hon'ble Court be pleased to set aside the impugned order. He submits that if the impugned order is not set aside, irreparable loss will be caused to the defendant.

3. On the other hand, the learned counsel for the plaintiff submits that the plaintiff filed the suit on the basis of dishonour of cheques. He submits that at the request of the defendant, the plaintiff advanced Rs.15 lacs in cash by way of loan. For repayment of the said loan, the defendant issued cheque of Rs.15 lacs. When the plaintiff issued legal notice to the defendant

calling upon him to repay the said amount with interest, the defendant failed and neglected to do so. Hence, the plaintiff filed the Summary Suit in the Trial Court. He submits that the defendant has not disputed the issuance of cheque as well as his signature. Therefore, there is no substance in the Writ Petition and same be dismissed with costs.

4. Heard both sides at length. The Summary Suit is maintainable under Order XXXVII Rule 2 of the Code of Civil Procedure, 1908 which reads thus:

(2) Subject to the provisions of sub-rule (1) the Order applies to the following classes of suits, namely:—

(a) suits upon bills of exchange, hundies and promissory notes;

(b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising,—

(i) on a written contract, or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.”

5. In the present matter, the plaintiff has not placed on record any document as required by Order XXXVII Rule 2 of the Code of Civil Procedure, 1908. These facts were not considered by the Trial Court at the time of passing the impugned order. Considering these facts, I am satisfied that the petitioner / defendant has made out a case for allowing the Writ Petition.

6. Hence, following order is passed:

a. Writ Petition is allowed.

b. Order dated 01.11.2014 passed by the 2nd Jt. Civil Judge, Senior Division Pune below Exhibit- 19 in Special Summary Suit No. 90/2013 is set aside.

c. Unconditional leave is granted to the defendant to defend Special Summary Suit No. 90/2013.

d. The petitioner defendant is permitted to file written statement within 4 weeks from today copy to other side.

e. Hearing of the Special Summary Suit No.90/2013 is expedited.

f. In view of the above, nothing survives in the Civil Application. Same stands dismissed as infructuous.

JUDGE