

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****APPEAL (L) NO. 340 OF 2016
IN
SUMMONS FOR JUDGEMENT NO. 88 OF 2015
IN
SUMMARY SUIT NO. 754 OF 2015**

Panchali Chakravarty .. Appellant
versus
Dr. Jagannath Ganesh Hegde & Anr. .. Respondents

Mr. K. H. Halai with Mr. P. Ranjan i/b. M/s. Halai & Co. for Appellant.
Mr. Ajay P. i/b. M/s. Ajay P. & Associates for Respondent No. 1.
Mr. Yogesh D. for Respondent No. 2.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

DATE : 24 NOVEMBER 2016

P.C.:

1] The appellant appeals order dated 1 August 2016 made by the learned Single Judge requiring the appellant, jointly and severally with original defendant nos. 2 and 3 in summary suit no. 754 of 2015 to deposit a sum of Rupees One Crore as a condition precedent for leave to defend the summary suit. The appellant contends that leave to defend ought to have been granted unconditionally.

2] Mr. K. H. Halai, learned counsel for the appellant submits that the summary suit instituted by the original plaintiff (respondent no. 1) is for the recovery of unaccounted and black money, which is against public policy. Such suit, according to learned counsel for the appellant is not maintainable and in any case must be discouraged. He submitted that the amount claimed by the plaintiff in the suit is an

unenforceable debt and therefore, the suit itself was not maintainable. He submitted that the cheques and other correspondence brought on record by the plaintiff, were basically, security documents and certain admissions in the course of cross-examination of the plaintiff in the proceedings before the Metropolitan Magistrate's Court at Bhoiwada establish the falsity of the plaintiff's case. Mr. Halai, in such circumstances submitted that the summary suit was itself not maintainable or in any case, unconditional leave to defend ought to have been granted by the learned Single Judge.

3] Upon consideration of the submissions of learned counsel for the appellant and the material on record, we are satisfied that the impugned order warrants no interference.

4] In this case, the appellant (original defendant no. 2) has not denied the execution of promissory notes or memorandum of settlement relied upon by the plaintiff. Further, the appellant, in proceedings relating to anticipatory bail admitted his liability. In fact, the appellant even issued a cheque in an amount of Rupees One Crore towards the repayment of the amount received by him from the plaintiff. The learned Single Judge has not only taken these circumstances into consideration, but further, has made reference to certain admissions on the part of the appellant in respect of the liability towards the plaintiff. The learned Single Judge, in the facts and circumstances of the present case, was quite right in requiring the appellant to deposit an amount of Rupees One Crore, as a condition precedent for leave to defend the summary suit.

5] Upon compliance with the condition imposed, the appellant is always at liberty to raise all preliminary defences as to the

maintainability of the suit or on merits. The observations in the impugned order or for that matter the present order are *prima facie* and for the purpose of determination whether leave to defend ought to have been unconditional.

6] The learned Single Judge has rightly relied upon the decision of the Hon'ble Supreme Court in the case of ***M/s. Mechelec Engineers & Manufacturers vs. M/s. Basic Equipment Corporation***¹, and properly applied the principles set out therein to the facts and circumstances of the present case. Accordingly, there is no case made to interfere with the impugned order.

7] This appeal is dismissed. There shall be no order as to costs.

CHIEF JUSTICE

(M. S. SONAK, J.)

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¹ (1976) 4 SCC 687