

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5820 OF 2016

1. Yedba Bhagwan Kadam,
Age-68 years, Occu-Agriculturist
and Labour,
2. Kusum w/o Yedba Kadam,
Age-46 years, Occu-Agriculturist
and Labour,

Both are r/o Sonpethwadi,
Tq. and Dist. Beed

-- PETITIONERS

VERSUS

Ashok Ankushrao Ghuge,
Age-41 years, Occu-Agriculturist
and Advocate,
R/o Borfadi, Tq. and Dist.Beed,
At Present R/o Balaghat Colony,
Canal Road, Beed

-- RESPONDENT

Mr.V.P.Sawant h/f Mr.A.D.Hande, Advocate for the petitioners.
Mr.S.R.Shirsat, Advocate for respondent No.2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 15/06/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally
by the consent of the parties.

2. The petitioners are aggrieved by the order dated 12/04/2016

passed by the learned Civil Judge, S.D. Beed in Summary Civil Suit No.7/2015 by which the petitioners have been directed to deposit an amount of Rs.1,00,000/-.

3. The petitioners contend that the respondent/plaintiff has filed a summary Civil Suit for seeking recovery of Rs.1,00,000/- on 27/10/2015. The petitioners appeared in the matter on 30/11/2015 and moved an application and application Exh.13 in their capacity of deemed defendants for seeking leave to file a say and defend the suit. By the impugned order, the learned Court has directed the petitioners to deposit the amount of Rs.1,00,000/- which is the entire purported recovery amount.

4. Mr.Sawant, learned Advocate for the petitioners strenuously submits that when the amount claimed was Rs.1,00,000/-, the Court not have directed the defendants to deposit the entire amount keeping in view the law laid down by the learned Full Bench of this Court in the matter of Jyotsna K.Valia Vs.T.S.Parekh and Co. [2007(4) Mh.L.J.517]. Specific reliance has been placed upon paragraph No.31 in the Jyotsna judgment (supra) wherein this Court has culled out the tests. Paragraph No.31 reads as under :-

“31. By so holding it is not as if the Defendant is denuded of his defences when he applies for leave to defend. The Supreme Court in *Machalec Engineering and Manufacturers v. Basic Equipment Corporation* has laid down the tests, which thereafter have been reiterated by the Supreme Court in *Sunil Enterprises v. S.B.I. Commercial and International Bank Ltd.* . The tests laid down are as under:

(a) If the defendant satisfies the Court that he has a good defence to the claim on merits, the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence, although not a possibly good defence, the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts may be sufficient to entitle him to defend, that is, if the affidavit discloses that at the trial he may be able to establish a defence to the plaintiffs claim the Court may impose conditions at the time of granting leave to defend the conditions being as to time of trial or mode of trial but not as to payment in to Court or furnishing security.

(d) If the defendant has no defence, or if the defence is sham or illusory or practically moon-shine, the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moon-shine, the Court may show mercy to the defendant by enabling him to try to prove a defence but at the same time protect the plaintiff imposing the condition that the amount claimed should be paid into Court or otherwise secured.”

5. Learned Advocate for the respondent has strenuously defended

the impugned order. He submits that considering the law laid down by the learned Full Bench in Jyotsna judgment (supra), the Trial Court has considered the law and in its discretion found it fit to direct the petitioners to deposit the entire amount. He submits that clause 'e' of paragraph No.31 would indicate that the Court should not show mercy to the defendant if his defence is illusory and for protecting the interest of the plaintiff, can impose the condition that the amount claimed should be paid in the Court or should be otherwise secured. He, therefore, submits that such discretion exercised by the Trial Court should not be interfered with by this Court in its supervisory or writ jurisdiction, which is akin to revisional jurisdiction.

6. Mr.Sawant submits that these petitioners are poor villagers. Petitioner No.1 is about 70 years old and his wife petitioner No.2 is about 48 years old. He states that the respondent is a flourishing legal practitioner at Dist.Beed. Taking into account the comparable hardships and the balance of convenience, a lesser amount could be directed to be deposited.

7. Mr.Sawant submits on instructions from the petitioners that they would deposit Rs.25,000/- before the Court below within a

period of 4 weeks keeping in view that the sowing season and agricultural activities have commenced and the petitioners have to purchase seeds for sowing and may not have so much of money in cash.

8. Considering the above, this petition is partly allowed. The impugned order dated 12/04/2016 is modified. The petitioners shall deposit the amount of Rs.25,000/- in the summary proceedings within 4 weeks from today, failing which, this order shall stand recalled and the impugned order shall stand restored. After the said amount is deposited, the learned Court shall direct the investing of the amount in a Nationalized bank initially for a period of 1 year.

9. Rule is made partly absolute in the above terms.

10. Needless to state, the petitioners shall not attempt to delay the proceedings before the Court below and shall refrain from taking adjournments on unreasonable grounds.

(Ravindra V.Ghuge, J.)