

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11815 OF 2016

Ramesh Mahadev Sanap

..PETITIONER

VERSUS

Anil Dinkar Kanthale

..RESPONDENT

....

Mr. Ajinkya Kale, Advocate h/f Mr. A.S. Khedkar, Advocate for petitioner.
Mr. V.P. Sawant, Advocate for respondent.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 26th JULY, 2017**

ORDER :

1. The petitioner is aggrieved by the order dated 30th July, 2016 by which application Exhibit 9 filed by the petitioner/defendant in Summary Civil Suit No. 2 of 2016 raising his defense, has been granted on the condition that 50% of the amount should be deposited.

2. I have considered the strenuous submissions of the learned Counsel for the respective sides.

3. There is no dispute that the issue in the summary case is with regard to a cheque issued by the petitioner for an amount of Rs.1 lakh and which was dishonoured as the petitioner directed the bank to stop the payment. The

defense put forth by the petitioner is that the cheque had been misused and the bank was therefore instructed to stop the payment. The contention is that this is a substantial defense and hence the Trial Court should have refrained from imposing any condition and should have granted unconditional leave to defend.

4. Reliance is placed upon the judgment of the Hon'ble Apex Court in the matter of *M/s Sunil Enterprises and Others Vs. SBI Commercial and International Bank Ltd. (1998) 2 BLJR 1113*.

5. I find that the Trial Court has rightly directed the petitioner to deposit 50% of the amount since the defense that the cheque was misused is quite a common defense that is raised in the similar matters. This Court has come across such defenses in several cases involving the dishonoring of the cheques. In the matter of *Defiance Knitting Industries Pvt. Ltd. Vs. Jay Arts (2006) 8 SCC 25*, the Hon'ble Apex Court has concluded that the direction to deposit Rs.20 lakhs considering the huge amount of recovery, was held to be an appropriate direction.

6. The Hon'ble Apex Court has laid down the law in *Syed Yakoob Vs. K.S. Radhakrishnan and Others AIR 1964 SC 447* and in the matter of *Surya Dev Rai Vs. Ram Chander Rai (2003) 6 SCC 682* that unless an order appears

to be perverse and erroneous and is likely to cause grave injustice, no interference is warranted. Merely because a second view is possible, the impugned order cannot be set aside.

7. I find that the impugned order is equitable and aimed at ensuring justice to both the sides. Same cannot be termed as being perverse or erroneous.

8. As such, this petition being devoid of any merits is therefore dismissed.

(RAVINDRA V GHUGE, J.)

SSD