

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3072 OF 2017

Sujata Mahendra Mayavanshi

.Petitioner

Vs.

Suresh Babu Jadhav

.Respondent

Mr.R.U.Singh, Advocate, for the Petitioner

Mr.B.J.Sarwade, Advocate, for the Respondent

CORAM : R.G.KETKAR, J.

DATE : 16.03.2017

P.C.

. Heard Mr.Singh, learned counsel for the Petitioner and Mr.Sarwade, learned counsel for the Respondent. Time to carry out amendment is extended by a period of one week from today.

2. By this Petition under Article 227 of the constitution of India, the Petitioner, hereinafter referred to as 'Defendant' has challenged the Judgment and Order dated 07.12.2016 passed by the learned Judge, City Civil Court, Greater Bombay in Summons for Judgment No.212 of 2011 in Summary Suit No.3799 of 2010. By that Order, the learned trial Judge dismissed Summons for Judgment and granted conditional leave to the Defendant subject to the Defendant's

depositing an amount of Rs.6,00,000/- in the Court within two months from the date of the Order.

3. In support of this Petition, Mr. Singh invited my attention to the cheque bearing No.937580 issued on Corporation Bank. He submitted that except signature of the Defendant appearing thereon, rest of the contents are not filled up by the Defendant and are filled up by the Plaintiff. He submitted that the blank cheque is misused by the Plaintiff and on that basis, summary suit is instituted. In fact, the Plaintiff had filed criminal case under Section 138 of the Negotiable Instruments Act, 1881 and the Defendant is acquitted. He also relied upon the decision of the Madras High Court in the case of *M. Venugopal Vs. G. Manohar, 2004-4-L.W.500*. Relying upon this Judgment, he submitted that blank cheque is manipulated by the Plaintiff when no consideration was passed thereunder.

4. On the other hand, Mr.Sarwade supported the impugned Order. He has taken me through the impugned Order and in particular, paragraphs 10 & 11 thereof. He submitted that after considering the material on record, the learned trial Judge held that defence raised is not found to be a substantial defence which would entitle the Defendant to

an unconditional leave.

5. I have considered rival submissions advanced by the learned counsel for the parties. I have also perused the material on record. For the reasons recorded in paragraphs 10 & 11 of the impugned Order, I do not find that the learned Judge has committed any error in passing the impugned Order. In paragraph 18 of ***IDBI TRUSTEESHIP SERVICES LTD. VS. HUBTOWN LTD., A 2016 SC 5231***, the Apex Court has observed thus :-

“18. Accordingly, the principles stated in paragraph 8 of Mechelec's case will now stand superseded, given the amendment of O.XXXVII R.3, and the binding decision of four judges in Milkhiram's case, as follows:

a. If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit;

b. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend;

c. even if the defendant raises triable issues, if a doubt is left with the trial judge about the defendant's good faith, or the genuineness of the triable issues, the trial judge

may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security;

d. if the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires;

e. if the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith;

f. if any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.”

6. In view thereof, Petition fails and same is dismissed.

(R.G.KETKAR, J.)