

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3461 OF 2017**

Mr. Neville Pesi Tata

...Petitioner/Org. Defendant

vs.

Mr. Deepak Navnitlal Shah

...Respondent/Org. Plaintiff

Mr. Prasad Dani, Sr. counsel a/w Ms. Naira Jejeebhoy, Mr. Abhishek Sawant, Mr. Kayomurzd Billimoria, Ms. Khushbu Malviya i/b Desai and Chinoy for the Petitioner.

Mr. Vinit Naik, Senior counsel a/w Mr. Lalan Gupta i/b Mr. Abhijeet C. Mahadeokar for Respondent.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 4th October, 2017

P.C.:

. Heard. Rule. Learned counsel for the Respondent waives service. Rule made returnable forthwith by consent of the parties.

2. The Petitioner herein happens to be the original Defendant in Summary Suit No.240/2016 pending before the City Civil Court at Mumbai. The Petitioner herein being aggrieved by the order dated 5/1/2017 has filed the present writ petition. It was a Summons for Judgment No.267/2016. The Plaintiff had contended that he is the victim of criminal breach of trust, forgery and fabrication of documents at the hands of one Mr. Netravalli and, therefore, he had filed a complaint bearing No.219/SW/2013 against the said accused alleging therein that the accused No.1 had committed offence punishable under section 120-B, 309, 415, 420, 463, 467, 468, 471, 474 and 506(II) r/w. 34 of the IPC.

3. The learned Magistrate gave directions under section 563 of Cr.P.C. Pursuant to the said directions Crime No.219/SW/2013 was registered.

4. In the course of investigation, it is transpired that part of the amount had traveled to the present Petitioner. When confronted the Petitioner seems to have admitted that he had taken a loan of Rs.25 Lakhs from Mr. Netravalli and in return he was to pay Rs.36 Lakhs to Mr. Netravalli. In all fairness, the Petitioner had acknowledged the receipt of the said amount and had informed the Plaintiff that instead of Mr. Netravalli he would pay the said amount to the Plaintiff. It is the case of the Plaintiff that MOU was executed between the Plaintiff and the present Petitioner. The Plaintiff had also relied upon the e-mail communication by the present Petitioner stating as follows:

“I wish to confirm that an amount of 36 L is due to be repaid to Mr. Nitin netravali/Mr. Deepak Shah. I confirm that I will return these funds to him in part or in a single bullet payment no later than 365 days from today. As security, I am prepared to leave my property ownership documents of my approximate 53 Ghuntas in Ratnagiri, which I confirm are fully in my lawful possession and with full authority to deal with as I wish, in an escrow with MZM Legal. I confirm that only once full and final payment is received by Mr. Shah will my property documents be returned to me. The property will be taken in lieu of repayment of the above funds should I not be able to return the funds as promised within the stipulated time frame. I understand that the above will be put into a formal consent MOU by Tuesday 18th March, at which point I will also be leaving my original documents with you in escrow. I ask that in return for my above confirmation, you assure me that my name will not feature anywhere in connection with any media or other press release with respect to this arrangement or business dealings. Mr. Deepak Shah will also not initiate or execute any civil or criminal proceedings in any court of law, or police station in the past, present or future regarding the same monies and his dispute with Mr. Nitin Netravali.”

5. Pursuant to the said e-mail title deeds were deposited with the Escrow Agent. According to the Petitioner the land was valued at Rs.56 Lakhs and it would fulfill the demand of Rs.36 Lakhs. It appears that subsequently it was revealed that the real value of the said land was falsely represented and it was in fact even less than Rs.8 Lakhs. Hence, the Plaintiff had filed a Summary Suit. The Summons for Judgment was issued

on 5/1/2017. Hence, the present Writ Petition.

6. After arguing at length, in the course of arguments, Mr. Dani, Senior counsel has submitted that the Petitioner would deposit amount of Rs.20 Lakhs in the City Civil Court within a period of 8 weeks from today.

7. Mr. Naik, learned counsel for the Respondent has also submitted that upon the Petitioner depositing the amount of Rs.20 Lakhs, the Plaintiff would deposit title deeds of the land which were kept with the escrow agent and the share certificates of M/s. Central Acetone Pvt. Ltd.

8. In the interest of justice, since this is a suit seeking money decree, the following order is passed:

The order dated 5/1/2017 stands modified in the following terms:

- i) The Petitioner shall deposit amount of Rs.20 Lakhs in the City Court, Mumbai in Summary Suit No.240/2016 within a period of 8 weeks from today.
- ii) The Plaintiff shall also file the title deed of the land at Ratnagiri as well as share certificate of M/s. Central Acetone Pvt. Ltd. within a period of one week thereafter.
- iii) In view of this interim arrangement, the Learned City Civil Court is directed to dispose of the suit, in any case on or before 30/4/2018.
- iv) The directions in the impugned order would continue till the disposal of the Suit. Upon failure to deposit amount of Rs.20 Lakhs within a period of 8 weeks from today, the earlier order dated 5/1/2017 will be restored to its original position.

(SMT. SADHANA S. JADHAV, J.)