

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

**WRIT PETITION NO.5128 OF 2016
WITH
WRIT PETITION NO. 6547 OF 2014**

Mrs.Dilshad Mushir Merchant

...Petitioner

Versus

Mr. Nareshkumar M. Ahuja

...Respondent

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Mr.Pradeep J.Thorat for the Petitioner in both Writ Petitions.
Mr.Deepak T. Raut for the Respondent in Writ Petition No. 5128 of 2016.
Mr.Rajesh B.Parab for the Respondent in Writ Petition No. 6547 of 2014.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 31, 2017**

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petitions are heard finally and disposed of at the stage of admission.
2. By common order, both the Writ Petitions are decided as the parties and the issues involved in both the Writ Petitions are same.
3. Both the Writ Petitions are arising out of the orders passed by the learned Judges, City Civil Court, Mumbai, thereby granting conditional leave to the petitioner i.e. defendant to defend the

respective Suits on a condition that the amount is to be deposited in the Court within stipulated time from the date of the orders.

4. The respondent/original plaintiff has filed a Summary Suit No. 480 of 2013, wherein Summons for Judgment No. 79 of 2013 was taken out for recovery of the amount of Rs. 10,00,000/- from the petitioner/defendant. The learned Judge, City Civil Court, Mumbai by order dated 20.03.2014 has granted conditional leave to the petitioner/defendant to defend the Suit, wherein the amount of Rs.10,00,000/- was directed to be deposited within a period of six weeks from the date of the order. The said order is under challenge in Writ Petition No. 6547 of 2014.

5. The respondent/original plaintiff has filed another Summary Suit No. 2041 of 2013, wherein Summons for Judgment No. 353 of 2014 was taken out for recovery of the amount of Rs. 10,36,000/- from the petitioner/defendant. The learned Judge, City Civil Court, Mumbai, by order dated 14.12.2015 has granted conditional leave to the petitioner/defendant to defend the Suit, wherein the amount of Rs. 10,36,000/- was directed to be deposited within a period of four weeks from the date of the order. The said order is under challenge in Writ Petition No. 5128 of 2016.

6. It is the case of the respondent/original plaintiff that the petitioner/defendant was in the business of investment. Accordingly, the petitioner gave an advertisement and after reading that advertisement, the respondent/plaintiff approached the petitioner and invested an amount of Rs.3,75,000/- in his name and an amount of Rs. 6,25,000/- in the name of his brother. Thus, a total amount of Rs. 10,00,000/- was deposited in one transaction and an amount of Rs. 7,45,000/- was deposited in the second transaction in the year 2009. The petitioner had issued three cheques for Rs. 3,00,000/-, Rs. 4,60,000/- and Rs. 2,76,000/- totaling an amount of Rs. 10,36,000/- towards discharge of liabilities in the year 2010 and had also issued another cheque for Rs. 10,00,000/- on 20.01.2010. Thereafter, the respondent/plaintiff had deposited the said cheques for encashment, but those cheques were dishonoured with remark "Funds Insufficient" and, therefore, the respondent/original plaintiff filed two Summary Suits for recovery of the said amount. The learned Judges, City Civil Court, Mumbai have issued summons for judgment to the petitioner/defendant in those respective Summary Suits. The petitioner/defendant appeared in Summons for Judgment and has filed an affidavit in reply. After hearing arguments of both the

parties, the learned Judges, City Civil Court by their respective orders granted conditional leave to the petitioner/defendant. Hence, these Writ Petitions.

7. The learned counsel for the petitioner has submitted that the learned Judges, City Civil Court, Mumbai, have erred in granting conditional leave to defend the Suits, when the petitioner/defendant has made out a good case of substantive triable issues. He relied on the judgment dated 07.08.2012 passed by the learned Metropolitan Magistrate 30th Court, Kurla, Mumbai, in Criminal Complaint No. 3013836/SS/2010, wherein the petitioner has faced the trial for the offence punishable under Section 138 of Negotiable Instrument Act and she was acquitted. He has further submitted that the petitioner admits that she was working as an investor. In the cross examination, the respondent/original plaintiff admitted that he did not invest the amount of Rs. 21,46,000/-. The learned Judge, Metropolitan Magistrate Court has held that the case of the complainant is doubtful and the receipts filed on record in respect of payment of money did not appear genuine. The admission given by the complainant in the criminal case is to be read in the civil case and in view of this, whether the respondent/plaintiff has really invested the money with the

petitioner/ defendant or not is doubtful. He has further submitted that the learned Judges, City Civil Court ought to have appreciated that the defendant has good defence and has raised good triable issues and, therefore, no conditional leave should have been granted to the defendant to deposit the principal amount of Rs. 10,00,000/- and Rs. 10,36,000/-, which is cumbersome. Hence, he prays that the orders passed by the learned Judges, City Civil Court are to be set aside.

8. The learned counsel for the respondent/original plaintiff while opposing this Petition has submitted that the admission given by the respondent/plaintiff is to be read in full context. He has given answers to the compound questions asked by the learned counsel for the accused in criminal case. He has further submitted that the amount of Rs. 7,45,000/- was paid by the respondent/plaintiff towards the investment to the petitioner/defendant and the amount of Rs. 10,00,000/- was paid towards interest, however, it could not be explained in the criminal trial. In other case, the amount of Rs. 3,75,000/- was paid by the respondent to the petitioner and remaining amount of Rs. 6,25,000/- was paid by his brother and thus, the total amount of Rs.10,00,000/- for which the petitioner had issued cheques. Principally, the petitioner has accepted the transaction and liability of the said amount and, therefore, the

orders passed by the learned Judges, City Civil Court in respective Suits granting conditional leave to defend the Suits are justified. He has further pointed out that apart from the main signature on the cheques, the petitioner has also put her signature on the alternate cheques. He has further submitted that the blank cheques were not given towards security.

9. Perused the impugned orders, documents and the order dated 07.08.2012 passed by the learned Metropolitan Magistrate 30th Court, Kurla, Mumbai, in Criminal Complaint No. 3013836/SS/2010. It is admitted that the respondent/ plaintiff was working as an agent. However, in view of the submission of the counsel for the respondent and the cheques on record, it is difficult to believe at this stage that the petitioner has handed over some blank cheques with signatures to the respondent/plaintiff towards security and the cheques were misused by the respondent/plaintiff and he was called for enquiry by the police in order to save himself, he made a false case against the petitioner.

10. It is admitted that the petitioner was dealing in investments. The respondent/plaintiff has invested money with her. The cheques were issued by her and the same were dishonoured. Hence, the respondent/plaintiff has rightly filed Summary Suits for

recovery. Considering the defence of the petitioner, I am of the view that the orders of granting conditional leave to defend the Suits are legal and cannot be held as erroneous. However, the impugned orders are modified to an extent that the petitioner is directed to deposit 50% of the principal amount in the trial Court on or before 18.08.2017.

11. Writ Petitions are disposed of accordingly.

(MRIDULA BHATKAR, J.)