

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

WRIT PETITION NO.6496 OF 2017

Sanjivani Marketing & Ors. ... Petitioners

Vs.

Dhansukhrai Pragjibhai Shah HUF & anr. ... Respondents

Mr.A.S. Ramesan for the Petitioners

Ms.Garima Mehrotra i/b S. Murarka for Respondents

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 16, 2017**

P.C. :

1. Not on Board. Upon mentioning, taken on Board.
2. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.
3. This Writ Petition is filed against the order dated 5.12.2016 passed by the Ad-hoc Judge, City Civil Court, Greater Bombay in Summons for Judgement No.412 of 2014 in Summary Suit No.956 of 2014. It is argued that the petitioners i.e., original defendants have not obtained any loan of Rs.25 lakhs as alleged by the respondents i.e., the original plaintiffs. He submitted that there was some transaction between the parties and the learned Judge has

held that though there are triable issues, passed conditional order of deposit of Rs.25 lakhs in the trial Court. It is submitted by the learned Counsel that though the cheques which were given by the petitioners were bounced, they were not given towards payment but was by way of security towards business transaction. He has argued that the original plaintiffs have sought interest @ 18% and, therefore, whether they have a money-lender's licence or not is required to be adjudicated. He further submitted that the defendants i.e., the petitioners, have a good triable case on merits and therefore, the conditional order passed by the trial Court of depositing of Rs.25 lakhs is to be set aside.

4. The learned Counsel for the respondents submitted that the respondents/plaintiffs filed summary suit for recovery of Rs.32,43,052/-. In the year 2011, an amount of Rs.25 lakhs was paid in different amounts to the petitioners i.e., the original defendants, on promise to repay the said amount together with interest @ 18% p.a. However, no payment was made in December, 2013. Subsequently, in February, 2014, three cheques were issued, however, they were dishonoured with a remark of 'insufficient funds'. The summary suit is pending since 2014.

5. Heard submissions. Read the impugned orders. Perused the plaint and the record. The observations made by the learned Judge about the triable issues and passing the conditional order of payment of Rs.25 lakhs, cannot be faulted with. It is to be noted that the order of payment of Rs.25 lakhs was passed on 5.12.2016 and the amount was to be deposited within 8 weeks from the date of the order. Thus, at the most, by the midst of February 2017, the amount should have been deposited or the petitioner ought to have sought extension to pay the said amount. It is informed that the petitioner has filed Appeal from Order No.197 of 2017 in the month of January, 2017 and as it was not maintainable, he had to file this Writ Petition. However, still, the fact remains that he did not obtain any order of extension of payment of the amount or there was no stay granted to the said order.

6. Under such circumstances, no interference is required except the petitioner can be given some flexibility in the period of payment of Rs.25 lakhs. Accordingly, he is directed to deposit amount of Rs.10 lakhs till 31.7.2017 and thereafter, Rs.15 lakhs till 31.8.2017.

7. Rule stands discharged accordingly.

(MRIDULA BHATKAR, J.)