

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12716 OF 2017

Neelam Adwait Datar

.... Petitioner

V/s.

Smita Sudhir Mhalas

.... Respondent

Mr. Sushil Nimbkar for the Petitioner.

Mr. Shriniwas Sudhir Patwardhan for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 12TH DECEMBER 2017.

P.C. :

1. Heard Mr. Nimbkar, learned counsel for the Petitioner, and Mr. Patwardhan, learned counsel for the Respondent.

2. By this Petition, the order passed by the 2nd Joint Civil Judge, Senior Division, Solapur, on 15th September 2017, below Exhibit-18 in Special Summary Suit No.05 of 2014, thereby allowing the application for leave to defend the Suit, is challenged. The application was filed by the Petitioner, who is Defendant in the said Suit, for leave to defend the Suit. The Trial Court granted the leave to defend the Suit, but only subject to condition of deposit of Rs.12,00,000/-.

3. The submission of learned counsel for the Petitioner is that, the Petitioner has raised substantial triable issues in the written statement.

Therefore, the leave should have been unconditional. However, as the Trial Court has granted conditional leave, the impugned order needs to be quashed and set aside.

4. Per contra, learned counsel for the Respondent has pointed out to the averments made in the Suit; especially paragraph No.10, which pertains to cause of action, which shows that on dishonour of the cheque issued by the Petitioner, the cause of action arose. Therefore, apparently, the Suit for recovery of the amount is based on the Negotiable Instruments and in view thereof, the Trial Court has rightly considered that, unconditional leave to defend cannot be granted. The amount, which is directed by the Trial Court to be deposited in the Court, that of Rs.12,00,000/- cannot be called as unreasonable, having regard to the fact that the Suit is filed for recovery of an amount of Rs.19,02,660/-.

5. The impugned order passed by the Trial Court, therefore, does not call for any interference. Hence, Writ Petition stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]