

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

**WRIT PETITION NO. 2449 OF 2017
WITH
CIVIL APPLICATION NO. 451 OF 2017 IN WP/2449/2017**

Mr.Anand Sarnaaik & Anr.

..Petitioners.

Vs

Ramchand Atmaram Nagpal and
Ors

.. Respondents

Mr. Piyush Raheja, a/w Radha Kapadia i/b M/s Thakore Jariwala & Associates, Advocates for Petitioners.

Ms.Rekha Shukla, Advocate for Respondent no.1.

**CORAM : R.G.KETKAR,J.
DATE : 01/03/2017**

PC:

1. Not on Board. At the request of Mr. Raheja, taken up for admission. Heard Mr. Piyush Raheja, learned counsel for the petitioners and Ms.Rekha Shukla, learned counsel for respondent no.1 at length. Rule. Ms. Shukla waives service on behalf of the respondents. Having regard to the narrow controversy raised in this petition as also at the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 6.10.2016 passed by the learned Ad-hoc Judge, City Civil Court, Gr. Mumbai, passed in Summons for Judgment No.112

of 2016 in Summary Suit No.1059 of 2015. By that order, the learned trial Judge granted conditional leave to defend subject to depositing Rs. 50 Lakhs in the trial Court within eight weeks. After depositing the amount, the defendants are permitted to file written statement within four weeks, among other directions.

3. In support of this petition, Mr.Raheja invited my attention to the findings recorded by the trial Court in paragraph 12 of the impugned order. In paragraph 12 the learned trial Judge has observed thus:

“It appears that there are triable issues involved in the case.

The defence raised by the defendants cannot be said to be moonshine defence.

He submitted that once the learned trial Judge has recorded the finding to the effect that the defendants have raised triable issues and the defence raised by them is not moonshine, the learned trial Judge ought to have granted unconditional leave to defend.

4. On the other hand, Ms. Shukla supported the impugned order and submitted that the defence raised by the defendants is moonshine and there are no triable issues.

5. After arguing the petition for some time, she consents for setting aside the impugned order, thereby restoring the Summons for Judgment No. 112 of 2016 for deciding the same afresh in the light of the decision of the Apex Court in IDBI

Trusteeship Services Ltd Vs. Hubtown Ltd, 2017 (1) SCC 568.

6. In the case of IDBI Trusteeship Services Ltd (supra), the Apex Court has observed in paragraph 18 (b) and (c) thus :

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

a. xx xx xx

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;

Hence, by consent of the parties, Petition is disposed of in the following terms:

- (i) Impugned order is set aside. Summons for Judgment No.112 of 2016 is restored to the file of the learned trial Judge.
- (ii) The learned trial Judge will decide the Summons for

Judgment in the light of the Judgment of the Apex Court in the case of Trusteeship Services Ltd (supra). The learned trial Judge is requested to dispose of the Summons for Judgment within four weeks from production of the authenticated copy of this order. All contentions of the parties on merits are expressly kept open.

(iii) Rule is made absolute accordingly with no order as to costs.

(iv) In view of disposal of the petition, Civil Application No. 451 of 2017 in Writ Petition No. 2449 of 2017 does not survive and the same is also disposed of.

(R.G.KETKAR, J.)