

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 4684 of 2015**

Sayyed Khurshid Ibrahimsaheb  
age 41 yers occupation business and agriculture  
R/o at post AUSA Taluka AUSA District Latur

**...Petitioner**

**VERSUS**

Ashok Govind Shinde,  
age 46 years occupation agriculture  
R/o Nagarsoga Taluka AUSA District Latur. **...Respondent**

*Mr B.R. Warmaa, Advocate for petitioner*

**CORAM : SUNIL P. DESHMUKH, J.**

**DATE : 3<sup>rd</sup> September, 2018**

**ORDER :**

1. Heard learned counsel for petitioner. While the Court has granted the respondent-defendant leave to defend, according to learned counsel, it ought to have been with a condition of asking respondent to deposit amount claimed under the cheque, as he has admitted in clear terms issuance of the cheque. For said purpose, learned counsel purports to refer to and rely upon last proviso to Order XXXVII, Rule 3 (5) of the Civil Procedure Code, reading, thus:

“(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just;

*Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious;*

*Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court. ”*

2. Aforesaid rule gives indication of that the court is obligated not to refuse leave to defend unless the court is satisfied that the facts disclosed by the defendant do not indicate that he has substantial defence to raise. Last proviso would come into play if claim or part of claim is admitted by defendant. Although it is being claimed that there has been issuance of the cheque, at this

stage, it would be difficult to consider that the same would tantamount to admission by defendant about amount due from him. It is not the case of petitioner/plaintiff that defendant has admitted any claim of plaintiff. As such, said proviso would not be relevant in present case. Perusal of the order indicates that the defendant has purportedly referred to and contended that he has substantial defence to raise and court accordingly has granted defendant leave to defend without any condition.

3. In the circumstances, impugned order would not be faulted with. As such, the writ petition is rejected.

4. However, having regard to the fact that the suit is pending since 2014 and it is a summary suit, it would be expedient that the trial court proceeds with the same expeditiously and dispose of the same, preferably within a period of four months from the date of receipt of writ of this order.

**( SUNIL P. DESHMUKH )**  
**JUDGE.**