

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

WRIT PETITION NO. 7171 OF 2018

Mukesh Hiralal Mehta

...Petitioner

Versus

Daksha Ajay Khatlawala & Anr.

...Respondents

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Mr.Uzair Kazi a/w. Mr. Nainesh N. Amin and Ms. Sumedha Sawant
for the Petitioner.

Mr. Prashant Chavan a/w. Mr.Ajay Kathawala, Mr. Nirav Shah,
Ms. Radhika Shah i/b. Mr. Gopal Shah for the Respondents.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JULY 06, 2018**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission.
3. This Petition invoking the Writ Jurisdiction of this Court under Article 227 of the Constitution of India is filed wherein the order

dated 26th February, 2018 passed by the learned Ad-hoc Judge, City Civil Court, Borivali Div., Dindoshi, Mumbai in Summons for Judgment No. 77 of 2015 in Summary Suit No. 208 of 2015 is challenged.

4. The respondents, who are the original plaintiffs, have filed a Summary Suit No. 208 of 2015 against the petitioner/ defendant for recovery of Rs. 38,06,290/- alongwith future interest @ 18% p.a. on Rs. 31,00,000/- from the date of filing of suit till its actual realization and cost of the proceeding.

5. There was transaction of the flat for which Memorandum of Understanding dated 9th November, 2013 was executed between the parties. Pursuant to the said Memorandum of Understanding, the plaintiffs have paid Rs. 11,00,000/- (Rupees Eleven Lakhs only) to the defendant as an earnest amount and subsequently, Rs. 20,00,000/- (Rupees Twenty Lakhs only) was paid to the Bank of Baroda where the flat was mortgaged by the defendant. However, the transaction was not materialized further and, therefore, the plaintiffs have filed the summary suit for recovery of their money. Summons for judgment was served on the

defendant. The defendant appeared in the Court and took defence that he is not liable to pay the said amount and the transaction of the said Memorandum of Understanding cannot be covered under Order 37 of the Code of Civil Procedure, 1908. The liability has been denied under other defences in respect of performance of the contract.

6. The learned Counsel for the petitioner submits that the trial Court has failed to consider that the defendant has made out a good case under triable issue and the order of conditional leave should not have been passed.

7. The learned Counsel for the respondents opposes this Petition. He submits that the defendant has not made out good ground to grant unconditional leave. He supports the order passed by the learned Judge of the trial Court.

8. Heard submissions. Perused impugned order. I am of the view that no interference is required in the order dated 26th February, 2018 passed by the learned Ad-hoc Judge, City Civil Court, Borivali Div., Dindoshi, Mumbai. Considering the defence

taken by the learned Counsel for the petitioner, some concession can be given to the petitioner by modifying the impugned order as follows:

ORDER

a) The petitioner is directed to deposit an amount of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) with the Deputy Registrar (Civil) of the City Civil Court, Borivali Div., Dindoshi, Mumbai in two installments.

(i) Rs. 10,00,000/- (Rupees Ten Lakhs only) to be deposited on or before 20th July, 2018;

(ii) Rs. 15,00,000/- (Rupees Fifteen Lakhs only) to be deposited on or before 7th August, 2018.

b) The remaining order of the trial Court is maintained.

9. With this modification, Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)