

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Commercial Appeal (Lodg) No.205 of 2018

in

Summons For Judgment No.70 of 2016

in

Summary Suit No.410 of 2016

Abdul Wahab

...Appellant

vs.

Mr.Prakash Shah

...Respondent

With

Notice of Motion (Lodg) No.419 of 2018

Mr.Vishal Kanade with Mr.Ashwin with Mr.Balwant V.Salunkhe, for the Appellant.

Mr.Rohan Cama with Mr.Anirudha Lad I/b. B.J.Law Offices LLP, for the Respondent.

CORAM: *NARESH H.PATIL AND
 G.S.KULKARNI, JJ*

DATED: *25th June, 2018*

P.C.:

1. This appeal is directed against an order dated 23rd February,2018 passed by the learned Single Judge in Summons for Judgment no.69 of 2016 in Commercial Suit No.479 of 2016 and Summons for Judgment No.70 of 2016 in Commercial Suit No.411 of 2016.

2. We have heard the learned Counsel for the parties. The learned Counsel for the appellant in respect of the order passed in Summons for Judgment no.70 of 2016 has drawn our attention to the record. The learned Counsel submitted that the learned Single Judge ought to have considered the defence in proper perspective. The learned Counsel submitted that the impugned order deserves to be quashed and set aside as the necessary material which were already placed on record has not been taken into consideration by the learned Single Judge.

3. Per contra the learned Counsel for the respondent has drawn our attention to the entries in the books of accounts wherein the amount has been shown as closing balance and the cheque was issued by the appellant. The pleas raised and the defences adopted are not convincing, therefore, the learned Counsel submits that the appeal does not deserve any consideration.

4. As regards the order passed in the Summons for Judgment No.69 of 2016, the learned Counsel for the appellant does not have any grievance. Therefore, we are not entertaining the appeal as against the said order.

5. We have perused the record placed before us and considered the impugned order. We have considered the submissions advanced. We do not find any error or perversity in the view adopted by the learned Single Judge. We have seen the extract of the accounts. Even against the closing balance, the subject amount of Rs.86,00,000/- has been shown and the learned Single Judge has rightly observed that the defence does not indicate any substantial triable issue or appear to be plausible, much less probable. The appellant had issued a cheque which fact is not denied but the plea now raised that it was for other transaction, is not borne out from the record placed before us.

6. There is no error or perversity in the impugned order which the learned Single Judge has passed on the material produced before it. We are not inclined to interfere with the order. The appeal is dismissed.

7. As appeal is disposed of, pending Notice of Motion (Lodg) No.419 of 2018 does not survive, it is disposed of.

(G.S.KULKARNI, J.)

(NARESH H. PATIL, J.)