

BDP-SPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10648 OF 2019**

Thanaram Tolaji Borana Petitioner.
V/s
Pappu Ramnarayan Sharma Respondent.

Mr. Rahul Kasbekar for the Petitioner.
Mr. Nagesh Y. Chavan for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 17, 2019

P.C.:-

1] In a suit under Order 37 of the CPC, instituted by the Respondent, Petitioner-Defendant moved an application Exhibit-16 under Rule 3 sub-rule 5 of Order 37, seeking unconditional leave to defend, which came to be disposed of by an order dated August 16, 2019 impugned in the present Petition. Petitioner-Defendant was directed to deposit amount of Rs 6 lakhs, subject to which leave to defend came to be granted.

2] Feeling aggrieved, the submissions of learned Counsel for the Petitioner are that the Respondent-Plaintiff is already before the Criminal Court i.e. Chief Judicial Magistrate, Kolhapur, as the said

Court has issued process for the offence punishable under Sections 403, 427, 323 and 506 of the Indian Penal Code in the backdrop of the damage caused to the premises of the Petitioner by the Respondent. He has also urged to rely upon the pleadings in parallel suit initiated by him, disclosing as to why the amount of Rs 6 lakhs is not refunded to the Respondent. The learned Counsel would urge that provisions of Order 37 Rule 3 contemplates discretion to be exercised by the Civil Court in judicious manner, provided the Petitioner satisfies requirements as spelt out thereunder. According to him, Petitioner-Defendant has disclosed availability of substantial defence, so as to demolish the liability alleged and that being so, Court should have exercised the discretion in favour of the Petitioner. In support of his submissions, the learned Counsel relied upon the Judgment in the matter of *Sudin Dilip Talaulikar vs. Polycap Wires Private Limited and Others*¹

3] The learned Counsel for the Respondent supports the order and sought dismissal.

¹ (2019) 7 SCC 577

4] In the Plaint before the Small Causes Court, the categorical statement is made in para 3 that aforesaid liability of Rs 6 lakhs, as is spelt out in the order, is enforceable against the Petitioner and that is why the suit was brought in action and application under Order 37 Rule 3. The said pleadings are not denied by the Petitioner-Defendant and as such, pleadings therein stood admitted.

5] The explanation sought to be tendered that such admission by the Petitioner in a suit initiated by him cannot be accepted. Least that was expected of the Petitioner was to explain the same in the application while admitting/not denying the pleadings in para 3 of the Plaint. The said admission is formed to be the basis for directing the Petitioner to deposit amount of Rs 6 lakhs i.e. claim in the suit while granting leave to defend.

6] The Apex Court in the matter of *Sudin Dilip Talaulikar* (cited supra) has observed that in a given set of facts and circumstances, Civil Court is armed with the powers to grant leave to defend unconditionally, provided such discretion is to be exercised in judicious matter. In the said judgment the Apex court has relied on

the Judgment in the matter *Idbi Trusteeship Services Ltd. vs. Hubtown Ltd.*² wherein the Apex Court has observed that in case if Petitioner-Defendant satisfies the Court that there exists substantial defence in his favour which is likely to be made him succeed in defending the suit or triable issues indicating that a fair and reasonable defence is set out, it is always open for the Court to grant leave to defend unconditionally.

7] In the case in hand, the factum of admission, as discussed hereinabove, can be prima facie inferred. As such, it is difficult to accept the submissions of the Petitioner that the Petitioner is likely to succeed in the suit in question or he has set out triable issues while raising reasonable defence.

8] In the aforesaid backdrop, no fault could be noticed in the order impugned. Petition fails and the same stands dismissed. Time to deposit the amount as ordered by the Court below is extended by eight weeks.

(NITIN W. SAMBRE, J.)

² (2017) 1 SCC 568