

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3081 OF 2019

Narayan Hari Keluskar

...Petitioner

vs.

Ravindra Vasant Khot

...Respondent

Mr. V.S. Kapse I/b. Mr. Sudhir Prabhu, for the Petitioner
Mr. Arun Kumar Roy, for the Respondent

CORAM : M. S. SONAK, J.

DATE : APRIL 16, 2019

ORAL JUDGMENT

. Mr. Roy, learned counsel for the Respondent seeks leave to speaking to the minutes of the order dated 22nd March, 2019. Leave is granted.

2. In paragraph No. 2, line No. 2 the expression “unconditional” is substituted with expression “**conditional**”. Similarly, in the Line No. 4, paragraph No. 2 the figure “Rs. 2,25,000/-” is substituted with figure “**Rs. 2,50,000/-**”.

3. The aforesaid correction to be carried out in the original order dated 22nd March, 2019 as well as in the order uploaded on the website.

4. Heard Mr. Kapse, the learned counsel for the Petitioner and Mr. Arun Kumar Roy, learned counsel for the Respondent.

5. The challenge in this Petition is to the order dated 11th January, 2019 made by the City Civil Court, Dindoshi, Mumbai granting conditional leave to the Petitioner to defend the summery suit subject to deposit of Rs. 2,50,000/-.

6. Mr. Kapse submits that the Petitioner in his written statement had taken defence that it is the Petitioner who had paid Rs. 2,50,000/- to the Respondent in the summery suit. Mr. Kapse submits that this has been misinterpreted, as the same admission on the part of the Petitioner of having receiving amount of Rs. 2,50,000/- is from the Respondent. He submits that at no stage has the Petitioner admitted the receipt of Rs. 2,50,000/- from the Respondent and therefore, the learned trial Judge was not justified in imposing any condition upon the Petitioner regards the deposit of Rs. 2,50,000/-. He submits that from the perusal of the Plaint itself, it is evident that Respondent come up with contradictory case. He points out that there is no evidence on record to establish that the Respondent had paid any amount at all to the Petitioner.

He points out that the Respondent is known for to take money from people by giving them false assurance that he will provide them flats. He point out that this flows from the pleading in the plaint itself. The cheque for Rs. 25 lakhs was given as a cost. The Respondent informed the Petitioner that such cheque is necessary in order to expedite allotment of flat in his favour. He submits that the Petitioner has raised the formidable defence in the suit and therefore unconditional leave to defend ought to have been granted.

7. Mr. Arun Kumar Roy, learned counsel for the Respondent supports the impugned order on the basis of reasoning reflected therein.

8. He asserts that there was clear admission in the course of argument that Rs. 2,50,000/- had been received by the Petitioner from the Respondent. He submits that the claim of the Respondent in the suit was for Rs. 10,80,000/- and in fact the learned trial Judge should have required the Petitioner to deposit this entire amount as pre condition leave to defend the suit.

9. Since the impugned order made refers to admission of the liability by the Petitioner in an amount of Rs.2,50,000/-, report was called for from the the learned City Civil Court. The report states that advocate Kunal Rane while arguing the matter on behalf of the Petitioner admitted that amount of Rs. 2,50,000/- was in fact received by the Petitioner from the Respondent.

10. Mr. Kapse however disputed the aforesaid position on the basis of instruction from the Petitioner. He further points out that the Petitioner has himself not given any admission and even the learned City Civil Court states that only the advocate for the Petitioner had made such statement or gave such admission. He states that in such circumstances, the learned City Civil Court Judge was required to insist some purses or affidavit from the Petitioner. Normally, when the matter is reflected in the impugned order, the same has to be accepted. This is the principle laid down by the Supreme Court in the case of **State of Maharashtra vs. Ramdas Shrinivas Nayak, 1982 AIR 1249**. It is held in this judgment as follows:

We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the

judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error (Per Lord Buckmaster in Madhusudan v. Chandrabati, AIR 1917 PC 30). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

11. The parties cannot be permitted to contest what transpired before the Court by filing affidavit or otherwise. Therefore, normally the statement as is reflected in the impugned order and is further reiterated in the report of the City Civil Court that on behalf of the Petitioner, there was admission that Rs. 2,50,000/- had been received by the Petitioner from the Respondent is required to be accepted at least at the stage of deciding the issue of grant of leave.

12. However, taking into consideration, the contention now raised by Mr. Kapse even if this aspect is completely ignored, as I propose to ignore, nevertheless, there is no case made out to

interfere in the impugned order. Admittedly, the Petitioner had issued a cheque of Rs. 2,25,000/- in favour of the Respondent. The Petitioner has nowhere denied the factum of issuance of such cheque. The explanation offered by the Petitioner with regard to issuance of cheque hardly inspires any confidence.

13. The explanation is contained in paragraph 19 of the written statement filed by the Petitioner. In the written statement, the Petitioner on one hand, has stated that he has no connection whatsoever with the transaction, if any, between the Respondent and Mr. Khanvilar, Mr. Sanjay Mohite, Mr. Laxman Kamble and Mr. Suresh Nar. On the other hand, the Petitioner makes reference to this transactions and states that in view of such transaction, the request was made by the Respondent and in pursuance of such request the cheque for Rs. 25 lakhs was given by the Petitioner to the Respondent. The same paragraph then proceeds to state that the cheque was shown because the Respondent was wanted to show the cheque as security to secure the flat under Government quota which he had assured to the Petitioner. There are contradictions in the defence raised by the Petitioner.

14. As against the claim for Rs. 10,80,000/- in the summery suit and as against the cheque of Rs. 25 lakhs which was admittedly issued by the Petitioner to the Respondent and the cheque admittedly dishonored by the Petitioner's bankers. The learned City Civil Court has granted the Petitioner leave to defend the suit subject to deposit of Rs. 25 lakhs which is less than even 25 % of the claim amount in the summery suit. The peculiar facts of the present case, it cannot be said that there is no jurisdictional error or serious infirmity in the view taken by the learned trial judge.

15. Accordingly, this Petition is dismissed.

16. There shall be no order as to costs.

17. At the request of Mr. Kapse, time for deposit of Rs. 2,50,000/- is however extended by a period of four weeks from today.

18. It is made clear that observations in the impugned order or for that matter in the present order are only in the context of deciding the issue of grant of leave to defend. Therefore, such

observation need not influence the learned City Civil Court whilst deciding the suit on its own merits and in accordance with law.

19. All contentions of all parties are expressly kept open.

(M. S. SONAK, J.)