

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3167 OF 2016

Arvindbhai Chhanabhai Rathod

..Petitioner.

V/s.

Budhiabhai Keshavbhai Tandel

..Respondent.

Ms.Anjali R.Shileddar-Baxi for the petitioner.

Mr.Ralston Fernandes for the respondent.

CORAM : M.S.SONAK, J.

DATE : MARCH 26, 2019

P.C.:-

Heard Ms.Baxi, learned counsel for the petitioner and Mr. Fernandes, learned counsel for the respondent.

2. Challenge in the petition is to the order dated August, 19, 2014 by which learned trial Judge, the operative portion of which reads as thus :-

“1. *Application is allowed.*

2. *The defendant is directed to begin the case first as per provisions of Order 18 Rule 1 of the Code of Civil Procedure.*

3 *No order as to costs .”*

3. The petitioner is the original defendant and respondent is the original plaintiff in Special Suit No.13/2013. The respondent instituted the said suit seeking recovery of an amount of Rs.46 lakhs with interest, alleged to have been paid by way of hand loan. From the pleadings, it is apparent that the petitioner has admitted receipt of Rs.46 lakhs, which in any case was paid by way of cheque. However, it is the case of the petitioner that this amount was not paid by way of hand loan but this amount was paid for certain other purposes, since, the petitioner is in the business of real estate. In fact, the petitioner has raised counter claim in the matter. If the particulars of the counter claim are perused, it is clear that the petitioner has even given credit for the amount of Rs.46 lakhs and on such basis, restricted its claim to Rs.33, 50,000/- together with interest

4. Taking into consideration the circumstances, learned trial Judge has correctly exercised the discretion and required the petitioner to begin the case by invoking the provisions of Order 18 Rule 1 of the Code of Civil Procedure. There is really no jurisdictional error in making of the impugned order.

5. Accordingly, this petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

(M.S.SONAK, J.)