

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12646 OF 2016

Sujata Shetty and Ors.

... Petitioners

V/s.

Pushpendra R. Bansal

.. Respondent

Mr.Omkar Nagvekar I/b Ms.Prabha Bhadadare for the petitioners
Ms.Pushpa Tiwari I/b M/s.S.R.S.Legal for the respondent no.1

CORAM: K.K. TATED, J

DATED : FEBRUARY 22, 2019

P.C. :

1 Heard the learned counsel for the parties.

2 By this petition, under Article 227 of the Constitution of India, the petitioners original defendants are challenging the order dated 31.03.2015 passed by Bombay City Civil Court, Mumbai in Summons for Judgment No.22 of 2011 in Summary Suit No.4699 of 2009 granting them conditional leave to defend the Summary Suit on condition of depositing the amount of Rs.24,85,000/- in the court.

3 In the present proceeding, the respondent plaintiff filed Summary Suit No.3155 of 2009 claiming sum of Rs.24,51,703/- from the defendant with interest @ 18% p.a. on principal amount of Rs.22,00,000/-. In that plaintiff preferred Summons for Judgement. Though Summons for Judgment was duly served, no one appeared on

behalf of the defendant when the matter was called out. Hence, Trial Court considering the affidavit in reply filed by the defendant and demand promissory note dated 27.03.2009, passed impugned order directing defendant to deposit sum of Rs.24,51,703/- to defend the suit. Being aggrieved by the said order, the defendant preferred the present Writ Petition.

4 The learned counsel for the petitioner submits that the court below erred in coming to the conclusion that the defendant failed to make out any case for unconditional leave. He submits that the Trial court failed to notice that entire summary suit is based on clause no.ix of the agreement dated 29.11.2008. He submits that for invoking clause no.ix of the said agreement, plaintiff has to show prima facie case. Clause ix of agreement dated 29.11.2008 reads thus:

“ix) This is agreed by the vendor that in case business is not performing as promised or discussed above then they will refund the investment or payment made by the buyer (PUSHPENDRA R. BANSAL).”

5 The learned counsel for the petitioner submits that Trial Court mainly relied on promissory note dated 27.03.2009 for the sum of Rs.24,85,000/-. He submits that as the plaintiff failed to make out any case for invocation of clause no.9 of the agreement dated 29.11.2008., there is no question of relying on the demand promissory note dated 27.03.2009. Hence, order passed by the Trial Court is required to be set aside, granting unconditional leave to the defendant to defend the

Summary Suit. He submits that if Writ Petition is not allowed, irreparable loss will be caused to the defendant.

6 On the other hand, the learned counsel for the plaintiff submits that though defendants were duly served by Summons for Judgment, they filed their affidavit in reply, but failed to remain present when the matter was called out for hearing. He submits that even in the absence of defendant at the time of hearing, Trial Court has considered their reply, agreement dated 29.11.2008 and promissory note dated 27.03.2009 and held that defendant is entitled conditional leave to defend the Summary Suit. He submits that admittedly on the basis of agreement dated 29.11.2008 defendant executed promissory note for the sum of Rs.24,85,000/- with 18% interest. He submits that when the plaintiff called upon the defendant to make the payment of the said promissory note, he failed and neglected to do so.

7 Heard both the sides at length.

8 Considering above facts, Trial Court rightly granted conditional leave to the defendant to defend the Summary Suit. In view of these facts and the reason given by the Trial Court, I do not find any reason to entertain the present Writ Petition. Hence, same stands rejected.

(K.K. TATED, J.)