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D. Pandit

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5095 OF 2019**

Concept Conveyors Pvt. Ltd.
(A Company registered under
the Companies Act) & Others
.... Petitioners.

V/s

D.R. Brothers
Through its Partner
Dhiren Ramesh Shah
..... Respondent.

Mr. Nagesh Y. Chavan for the Petitioners.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 15, 2019

P.C.:-

1] While granting leave to defend in favour of the Petitioners in a Suit for recovery pending before Joint Civil Judge, Senior Division, Sangli, Petitioners-Defendants are put to condition to deposit 50% of the claim amount.

2] The submissions are, condition of depositing 50% of the claim amount is unreasonable and contrary to the scheme of Order 37 Rules 6 and 7 of C.P.C. The learned Counsel would draw support from the

Full Bench Judgment of this Court in the matter of *Jyotsna K. Valia vs. T.S. Parekh and Co.*¹, so as to claim that Summary Suit is not maintainable on the basis of implied promise to pay. According to him, in the absence of any written contract between the parties, Petitioners ought not to have been directed to deposit 50% of the claim amount. Further contention is, in the proceedings under the Negotiable Instruments Act, as the cheque given by the Petitioners was dishonoured, Respondent-Plaintiff has given admission that he has not maintained any written record/agreement and as such, the order impugned needs to be modified to the extent of directing the Defendants to deposit 10% of the claim amount.

3] If the aforesaid submissions are appreciated, the fact remains that the Petitioners are already facing proceedings under the Negotiable Instruments Act, as the cheque issued by the Petitioners towards the amount of claim in the suit was dishonoured. In the proceedings under the Negotiable Instruments Act against the Petitioners, the Respondent-Plaintiff has in categorical terms averred that the transactions made with the Petitioners were accounted and

¹ 2007(4) Mh. L.J. 517

reflected in the balance-sheet. Apart from above, the fact remains that the Petitioners have prima facie unable to demonstrate before the learned Civil Court that the liability, as sought to be established against them, cannot be enforced. This Court cannot be oblivious to the fact that the Petitioners are facing prosecution under the Negotiable Instruments Act for dishonour of cheque, which is at advance stage. Apart from above, reliance placed on the judgment in the matter of *Jyotsna K. Valia* (cited supra) will be of hardly any assistance as the case of Respondent-Plaintiff is not based on any written agreement but out of admitted liability based on the cheque issued. That being so, no interference is warranted in the order impugned. Petition fails and the same stands dismissed. The observations made in this order are restricted to the extend of the issue canvassed.

(NITIN W. SAMBRE, J.)