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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7079 OF 2019

Varsha Bipin Vora	..Petitioner
vs.	
Suresh Shivram Palkar	..Respondent

....
Shri Manoj Jaiswal i/b. Manoj Jaiswal & Ass. for petitioner.
Shri K.P. Shetye for respondent.

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CORAM : M.S.KARNIK, J.

DATE : 26th SEPTEMBER, 2019

P.C. :

Heard learned counsel for the petitioner.

2. By this Petition the petitioner is challenging the order dated 2/3/2019 granting the petitioner – original defendant conditional leave to defend the suit on depositing the amount of Rs.1,55,000/- in the Court within 4 weeks.

3. The plaintiff claims to be the real estate agent. It is his case that he helped the defendant in disposing of the suit property. It is his further case that the defendant had agreed to

pay him 1% commission as his charges. The trial Court considered the document which is at Exhibit 'C' for transfer of the suit premises addressed to the Secretary of the Co-operative Society. The said document is signed by the defendant. In the said document there is an endorsement that the defendant agrees to pay 1% commission to the plaintiff. The trial Court therefore granted conditional leave to defend on depositing a sum of Rs.1,55,000/- in the Court.

4. Learned counsel for the respondent – original plaintiff supported the order passed by the trial Court. He would submit that for years together the plaintiff put lots of efforts to help the defendant to dispose of the suit property. Ultimately the suit property was sold for a consideration of Rs.1,55,00,000/-. The plaintiff is entitled to 1% commission as his charges which is clearly reflected in the document Exhibit 'C' and which is duly signed by the defendant. He would submit that in these circumstances the order passed by the trial Court does not call for any interference.

5. This Court had on an earlier occasion issued notice to the respondent on the petitioner depositing Rs.75,000/- before the trial Court. The said amount has been deposited.

6. In so far as the transfer form Exhibit 'C' is concerned, it is in this transfer form that there is a mention about the defendant agreeing to pay 1% commission to the plaintiff. According to defendant, this is subsequently added. The defendant nonetheless says that the signature on the transfer form is her signature. In so far as format of the transfer form is concerned there is no clause stipulating the commission that is payable. However, the sentence "I agree to pay 1% commission to Shri S.S. Palekar" is added by hand. No doubt, the transfer form is signed by the defendant. Even this document is a xerox of the original. It is the contention of learned counsel for the plaintiff that the original is with the society.

7. Considering all these facts and particularly the sentence which is added in the format which does not otherwise

form a part of the details that are required to be filled in, in my opinion, the impugned order passed by the trial Court deserves to be modified.

8. The impugned order is modified to the extent that conditional leave to defend the suit is granted on depositing Rs.75,000/- in the trial Court which amount has already been deposited pursuant to an interim order passed by this Court.

9. As the amount of Rs.75,000/- has been deposited, the defendant is directed to file written statement within a period of 4 weeks from today. The trial Court not to be influenced by any observations made by me while deciding the suit.

10. The Petition is partly allowed with no order as to costs.

(M.S.KARNIK, J.)

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