

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

WRIT PETITION NO. 2372 OF 2018

Ritesh Shetty

...Petitioner

Versus

Corgift & Ors.

...Respondents

Vinay Bhanushali - Advocate for the petitioner.

Rajesh Singh a/w Deepak Singh – Advocate for the Respondent-2.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 25th JULY 2019.

P.C. :

The petitioner filed Suit No. 3366 of 2013, before City Civil and Sessions Court, Bombay, against the respondents. It is for recovery of money based on business transactions. As the suit was filed under Order 37 of CPC, the respondents had to seek the Court's leave to defend. In that process, only the second defendant filed his counter and contended that he had retired from the partnership firm. The other two defendants—that is, the partnership firm and the other partner—did not seek the leave. Then, the Trial Court passed a conditional order dated 6.05.2006; it allowed the defendants to defend the case subject to their depositing Rs.35,00,000/-. Plainly put, they were required to pay close to 50 % of the suit amount.

2. Thereafter, the second defendant filed Writ Petition No. 9797 of 2016, before this Court. Similarly, the 1st and the 3rd defendants, too, have also filed Writ Petition No. 10064 of 2016. This Court disposed of both the writ petitions through a common order, dated 23.11.2016. It has held that if the defendants deposit Rs.35,00,000/- as were initially ordered, the Trial Court would once again hear their application for leave to defend, on merits.

3. Thus, when the matter was remanded, the 1st and 3rd defendants, too, sought leave and contested the matter. Eventually, the Trial Court has passed impugned order, dated 30.03.2017. It has held that all the defendants could defend their case subject to their depositing Rs. 35,00,000/-. It has further held that since they have already deposited that amount, on the direction of this Court in the earlier in the Writ Petition, that could be adjusted towards their complying with condition. Aggrieved by this observation, the plaintiff filed this Writ petition.

4. Shri Vinay Bhanushali, the learned counsel for the petitioner, has strenuously contended that the 1st and 3rd defendants initially sought no leave. But only based of this Court's directions and remand, they could file their application for leave to defend. About the second defendant, Shri Bhanushali has drawn my attention to the pleadings. His resignation notwithstanding, the business transactions concern the period when he was very much part of the firm—2009 and 2013. Allegedly, the second defendant resigned only in 2013. Even on that count, he produced no proof before the Court. To conclude, Shri Bhanushali submits that

besides the amount defendants already deposited, the Trial Court ought to have imposed further burden on them because practically they have no defense.

5. Shri Rajesh Singh, the learned counsel for the respondent-defendants, has submitted that the amount the defendants deposited initially based on this Court's direction was the precondition for the Trial Court to hear the leave to defend application afresh. If the petitioner's logic is to be accepted and if the defendants deposit Rs.35,00,000/- more, nothing further remains in the suit to be decided.

6. I find force in the defendants' contentions. With the deposit of 35 lakh rupees twice, nothing much may remain to contest about. At any rate, the Trial Court on remand has exercised discretion and passed what seems to be a reasonable, balanced order. And as the order does not suffer from any perversity, I declined to interfere. I, accordingly, dismissed the Writ Petition.

As the suit has been pending since 2013, especially under Order 37 of CPC; the Trial Court will make all efforts to dispose of the suit expeditiously—preferably in one year.

[DAMA SESHADRI NAIDU, J.]