

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

CIVIL REVISION APPLICATION NO.48 OF 2019

Anil Abhiman Amale and Ors. ..Applicants

vs.

Paresh Shishpal Mongia and Anr. ..Respondents

Mr.Priten Killedar for the applicants

Mrs.Vidya Nair with Mr.Animesh Singh I/b M/s.Dhiren Shah for
the respondent

**CORAM: K.K. TATED, J
DATED : JANUARY 31, 2019**

P.C. :

1 Heard.

2 By this Civil Revision Application Applicant original defendant is challenging the order dated 11.07.2018 passed by 12th Joint Civil Judge, Senior Division, Nashik in Sum. Civil Suit No.46 of 2015 granting conditional leave to the Petitioner original defendant to defend the Summary Suit on depositing sum of Rs.26,91,092/-.

3 In the present proceedings, Respondent original plaintiff filed Summary Suit No.46 of 2015 in the court of 12th Joint Civil Judge, Senior Division, Nashik for recovery of sum of

Rs.62,51,597/- with interest @ 1.5 % p.a. on the basis of M.O.U.
Dated 11.07.2014.

4 The learned counsel for the Petitioner submits that court below erred in coming to the conclusion that Petitioner failed to make out any case for unconditional leave to defend the Summary Suit. He submits that in the present proceedings, admittedly, Petitioner have to recover Rs.36 lakhs from the Respondent original plaintiff. He submits that though these facts were pleaded before the Trial Court, Trial Court failed and neglected to consider the same. Therefore impugned order is required to be set aside granting unconditional leave, to defend the summary suit in favour of Petitioner.

5 On the other hand, the learned counsel for the Respondent original plaintiff vehemently opposed the present Writ Petition. He submits that after considering the evidence on record, Trial Court directed Petitioner to deposit only Rs.26,91,092/- in the Trial Court. She submits that actually the Trial Court ought to have directed Petitioner to deposit entire amount with interest. She submits that defendant failed to make out case for unconditional leave to defend the Summary Suit. Therefore, there is no substance in the present Writ Petition. Same is required to be dismissed.

6 At this stage, the learned counsel for the Petitioner submits that Apex Court in the matter of ***State Bank of Hyderabad vs. Rabo Bank, 2015 (10) SCC 521*** held that if triable issue arises, in that case, defendant is entitled unconditional leave to defend

the summary suit. In support of this contention, he relies on paragraph 17 of the judgment which reads thus:

“17. An analysis of the above principles makes it clear that in cases where the Defendant has raised a triable issue or a reasonable defence, the Defendant is entitled to unconditional leave to defend. Leave is granted to defend even in cases where the Defendant upon disclosing a fact, though lacks the defence but makes a positive impression that at the trial the defence would be established to the Plaintiff's claim. Only in the cases where the defence set up is illusory or sham or practically moonshine, the Plaintiff is entitled to leave to sign judgment.”

7 It is to be noted that bare reading of the judgment and particularly paragraph 17 shows that there should be sufficient reason for granting unconditional leave to defend the summary Suit. Bare reading of the plaint and the MOU shows that Petitioner failed to make out any case for triable issue.

8 Apart from that Trial Court directed less than 50% amount of suit claim to the defendant to deposit in the Registry of the Trial Court. In view of these facts, I do not find any reason to entertain the present Writ Petition. Hence, following order is passed:

- a) Writ Petition stands rejected.
- b) No order as to costs.

c) Liberty granted to the Petitioner if he so desires to comply the order passed by Trial Court on or before 08.02.2019.

(K.K. TATED, J.)