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Bharat
D. Pandit

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

WRIT PETITION NO.2933 OF 2019

Shri Prakash Vasant Pathak,
Proprietor,
Pooja Developer

....Petitioner.

V/s

Shri Mangesh Ashok Kale
Through Power of Attorney
Shri Sagar Shripad Deshmukh

....Respondent.

Mr. Prathamesh B. Bhargude for the Petitioner.

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 07, 2020

P.C.:

1] While relying on the provisions of Money Lending Act, learned Counsel for the Petitioner/Defendant in a summary suit for recovery, submits that the Petitioner/Defendant has raised probable defence which will defeat the very money claim brought against him before Civil Judge, Senior Division, Pune. According to him, as against the Promissory Note of Rs 15 lakhs, condition of deposit of Rs 6 lakhs is unreasonable, particularly keeping in mind that the Petitioner has already paid an amount of Rs 20,50,000/- to the Plaintiff. He would invite attention of this court to the exorbitant interest which is sought to

be levied at @ 46% p.a. If the aforesaid contentions are appreciated, fact remains that in Writ Petition No.991 of 2018, since the Petitioner failed to file Written Statement within time, this Court showed indulgence, as the Petitioner has tried to settle the matter. Fact remains that till this date, claim between the Plaintiff and the Defendant has not been settled.

2] Apart from above, the proceedings which are brought against the Petitioner are in the form of a summary suit and while considering the prayer for grant of leave to defend, the Civil court is competent enough to put the Petitioner/Defendant to a reasonable condition of deposit of amount. In the case in hand, the Civil Court has directed the Petitioner/Defendant to deposit a reasonable amount of Rs 6 lakhs, that too within a period of two months vide order dated 17/11/2018. As against the claim of Rs 20,50,000/- brought in action by the Plaintiff, amount of Rs 6 lakhs, as was directed to be deposited, appears to be quite reasonable as could be inferred from the very scheme of Order XXXVII of the Civil Procedure Code.

3] The order granting leave to defend on condition of deposit of Rs 6 lakhs as such, appears to be reasonable.

4] Whether the probable defence of the Petitioner as is sought to be raised, based on the provisions of Money Lending Act is justifiable or not, cannot be gone into or appreciated at this stage, as the same can be gone into while deciding the matter on merits.

5] In the aforesaid backdrop, there is no substance in the Petition. Petition must fail and the same is dismissed.

6] However, in the backdrop of the request made by the learned Counsel for the Petitioner, Petitioner is granted liberty to deposit the amount of Rs 6 lakhs in two installments of Rs 3 lakhs each.

7] Petitioner shall deposit an amount of Rs 3 lakhs by 31/1/2020 and remaining amount of Rs 3 lakhs by 15/3/2020 or the Petitioner, if required, may furnish bank guarantee to that effect as ordered by the Civil Court. If Petitioner deposits an amount of Rs 3 lakhs, the Trial Court may not proceed with the suit till 31/1/2020.

(NITIN W. SAMBRE, J.)