

Anand

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

WRIT PETITION NO. 6112 OF 2016

Eknath Yeshwant Bondre (since deceased) .Petitioners
through Legal Heirs

Vs.

Madhav Prakash Joglekar & ors. .Respondents

Mr. S. C. Wakankar, Advocate, for the Petitioners
Mr. Nikhil Dongre, Advocate, for the Respondent No. 1

CORAM : REVATI MOHITE DERE, J.

DATE : 24.01.2020

P. C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioners have impugned the order dated 17.02.2016 passed by the learned 2nd Jt. C. J. S. D., Pune below Exh. 22 in Special Summary Suit No. 92 of 2015, by which the Respondent Nos. 1 & 2's (Original Defendant Nos. 1 & 2) Application seeking unconditional leave to defend the suit under O. 37, Rule 3(5) of the Code of Civil Procedure (for short 'C. P. C.') was allowed.

3. Learned counsel for the Petitioners (Original Plaintiffs) submits that the learned Judge had erred in granting unconditional leave to defend the suit to the Respondents (Original Defendants). He

submits that on page No. 39 of the Petition i. e. in the Application seeking leave to defend the suit under O. 37, Rule 3(5) of the C. P. C., the Respondent Nos. 1 & 2 (Original Defendant Nos. 1 & 2) had admitted liability upto Rs. 58,99,000/-. He further relied on page No. 26 of the Petition i. e. the M. O. U., wherein the parties had agreed to settle the account at Rs. 64,00,000/- in eight equal quarterly instalments as mentioned therein. He submits that pursuant thereto, the Respondents (Original Defendants) had issued eight cheques of Rs. 8,00,000/- each and one cheque towards security deposit totalling Rs. 64,00,000/-. He submits that in view of the admitted amount of Rs. 50,00,000/-, the learned Judge ought to have granted the Respondents (Original Defendants) conditional leave to defend the suit on depositing Rs. 50,00,000/-.

4. Learned counsel for the Respondent No. 1 opposes the Petition.

5. Perused the papers. The Petitioners (Original Plaintiffs) have filed a suit (Special Summary Suit No. 92 of 2015) for recovery of Rs. 66,93,000/- in the Court of the learned C. J. S. D., Pune. Pursuant to the summons, the Respondent Nos. 1 & 2 (Original Defendant Nos. 1 & 2) appeared in the said suit. In the said suit, the Respondent Nos. 1 & 2 (Original Defendant Nos. 1 & 2) filed an Application (Exh. 22)

seeking unconditional leave to defend the suit under O. 37, Rule 3(5) of the C. P. C. According to the Respondents (Original Defendants), the claim was baseless and that no such payment was due and payable to the Petitioner. The said Application filed by the Respondents (Original Defendants) was allowed by the learned C. J. S. D., Pune. A perusal of the Application (Exh. 22) filed seeking unconditional leave to defend the suit and the M. O. U. show that there is an admitted liability of atleast Rs. 50,00,000/-, by the said Respondents (Original Defendants) to the Petitioners (Original Plaintiffs). A perusal of the Application seeking leave to defend the suit filed by the said Respondents (Original Defendants), in particular, paras 6 to 8 reflect the same. Similarly, the M. O. U. which is on page No. 26 of the Petition also reflects admission of Rs. 50,00,000/-, as being payable by the Respondents to the Petitioner.

6. In this view of the matter, the impugned order dated 17.02.2016 passed by the learned 2nd Jt. C. J. S. D., Pune below Exh. 22 in Special Summary Suit No. 92 of 2015 cannot be sustained and as such, is quashed & set aside. Accordingly, the Respondent Nos. 1 & 2 (Original Defendant Nos. 1 & 2) are granted conditional leave to defend the suit on depositing Rs. 50,00,000/- in the trial Court within four weeks from today. On depositing the said amount, the trial Court to proceed with the case in accordance with law.

7. Accordingly, the Petition is disposed of.

All contentions of the parties are kept open.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)