

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

WRIT PETITION NO. 9706 OF 2019

M/s. Hasth Shilp and ors.	...Petitioners
vs.	
Smt. Sarita Balkrishna Dhoot and anr.	...Respondents
Ms. Asha Kanzariya i/by V.D.Upadhyay for the Petitioners.	
Mr. Amit Agashe for Respondent Nos.1 and 2.	

CORAM : REVATI MOHITE DERE, J.
DATE : 15th January, 2020

PC:

1. Heard learned counsel for the petitioners.

2. By this petition the petitioners have impugned the order dated 7.3.2019 passed by the learned 4th Joint Civil Judge, Senior Division, Pune below Exhibit 27 in Special Summary Suit No.90 of 1980, by which learned Judge granted the petitioners, leave to defend the suit, subject to depositing principal amount of Rs.58,16,500/- or executing bank guarantee of equal amount.

3. Learned counsel for the petitioners submits that, the petitioners had repaid the said amount to the respondents. Learned counsel relied on the bank statement filed by the respondents themselves in the trial court in support of their said submission. Learned counsel submitted that, in this view of the matter, no payment was due and payable to the respondents by the petitioners.

4. Learned counsel for the respondents opposed the petition. He submitted that, no interference is warranted in the impugned order dated 7.3.2019. He further submitted that, for the first time, the said ground was pleaded in the

petition and in fact, the same was never mentioned in the application filed by the petitioners seeking unconditional leave to defend the suit under Order XXXVII Rule 3(5) of the Code of Civil Procedure. Learned counsel for the respondents submitted that, the transaction between the respondents and Eisha Properties was separate transaction and had nothing to do with the monies paid by the respondents to the petitioners.

5. Perused the papers. The respondents (original plaintiffs) have filed a suit bearing Summary Suit No.90 of 2018 for recovery of amount of Rs.58,16,500/- along with future interest on the basis of cheques and other documents. In the said suit, the petitioners (original defendants) filed an application and sought unconditional leave to defend the suit under Order XXXVII Rule 3 (5) of the Code of Civil Procedure. It was urged by the learned counsel for the petitioners that, the ingredients of Section XXXVII of the Code of Civil Procedure are not satisfied and as such the summary suit was not maintainable. Certain other grounds were also raised before the learned Judge. The respondents opposed the application. According to the respondents (original plaintiffs) their suit was based on dishonoured negotiable instruments and balance confirmation letter. It was also urged that, as per the provisions of the Negotiable Instruments Act, there is a statutory presumption that the cheques have been issued towards a legal enforceable debt or liability. It was also urged that as the petitioners (original defendants) have denied the signatures on the said cheques or the balance confirmation letter, the same would give rise to triable issues.

6. The Learned Judge after hearing the parties passed the impugned order dated 7.3.2019. It is pertinent to note that, in the application filed by the petitioners (original defendants) seeking unconditional leave to defend the suit under Order XXXVII Rule 3(5) of CP.C., there is no mention/ averment with respect to having returned the amount through EIsha Group of Companies, although it appears that the said ground was raised during arguments. However, the learned Judge has considered the said argument on the basis of the oral submissions advanced by the learned counsel for the petitioners (original defendants). Mere denial of signature on the alleged cheques issued by the petitioners to the respondents and denial of signature on the balance confirmation letter is not sufficient inasmuch as the petitioners have not explained as to how the cheques in question came in the custody of the respondents (original plaintiffs). The said denial of issuance of cheques or balance confirmation letter by the petitioners would give rise to triable issues. Learned Judge has considered the submissions of the parties and had rightly granted conditional leave to the petitioners to contest the suit, subject to the petitioner depositing principal sum of Rs.58,16,500/- or executing a bank guarantee of the said sum. No infirmity can be found in the said order. Petition is accordingly dismissed.

Needless to state, that the learned Judge to decide the suit on its own merits uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.