

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 964 OF 2017**

Saifuddin Hatimbhai Lokhandwala

...Petitioner

Vs.

Suresh Chowta

...Respondent

Mr. Chetan Akerkar, Advocate for the Petitioner.

Mr. J.S. Hegde, Advocate for the Respondent.

CORAM : A.S. GADKARI, J.**DATE : 11th MARCH, 2020.****PC. :**

. By the present petition, the petitioner/original plaintiff has impugned Order dated 31st August, 2016 passed by the learned Ad-hoc Judge, City Civil Court, Borivali, Division at Dindoshi, Goregaon, Mumbai in Summons for Judgment No.13 of 2015 in Summary Suit No.488 of 2014 thereby, granting unconditional leave to defend the said suit to the respondent/defendant.

2. Heard Mr. Chetan Akerkar, Advocate for the Petitioner and Mr. J.S. Hegde, Advocate for the Respondent. Perused record.

3. The record indicates that, the petitioner has instituted the aforestated Summary Suit under Order XXXVII of the Code of Civil Procedure, 1908 for recovery of Rs.7,25,128/- with future interest on principal amount at the rate of 18% p.a. from the date of institution of suit till its realization.

After receipt of summons, the respondent appeared therein and filed his application for leave to defend, which has been granted by the Trial Court by its impugned Order. The record further indicates that, the plaintiff has

instituted the said suit on the basis of dishonour of cheques, which were issued by the respondent to the petitioner towards their financial transaction.

4. It is an admitted fact on record that, the prosecution instituted by the petitioner against respondent under Section 138 of the Negotiable Instruments Act, 1881 (For short “N.I. Act”) for dishonour of the same cheques has resulted into acquittal, as the respondent was successful in rebutting the presumption as contemplated under Section 139 of the said Act. It is thus, prima facie clear that, the respondent has substantial defence to defend the suit and in view thereof, the Trial Court has granted unconditional leave to defend the suit by rejecting the Summons for Judgment filed by the petitioner.

5. In view thereof, I find that, the Trial Court has not committed any error while passing the impugned Order.

Assuming for the sake of arguments that, there is some error while passing the order, the Constitution Bench of the Hon’ble the Supreme Court in case of *Waryam Singh and Another Vs. Amarnath and Another*, reported in AIR 1954 Supreme Court 215, has held that, the power of superintendence conferred by Article 227 is to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.

6. The petition being devoid of merits, is accordingly dismissed.