

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.8236 of 2019

M/s Swapnil Promotors and Developers & Anr. Vs. Rajkumar Dixit

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Abhijit Deshmukh, Advocate for the petitioners
Mr. S. K. Paunikar, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : JANUARY 14, 2020

By this writ petition, the petitioners (original defendants) have challenged order dated 29/08/2019, passed by the Court of 5th Jt. Civil Judge (Senior Division), Nagpur, whereby application for leave to defend (Exh.14) filed on behalf of the petitioners under Order 37 Rule 3 of the Code of Civil Procedure, 1908 (CPC) has been conditionally allowed, subject to the petitioners depositing 50% amount of the suit claim i.e. Rs.10,00,000/- before the Court below.

2. The respondent (original plaintiff) has filed suit for recovery of Rs.20,00,000/- against the petitioners, contending that he had provided service of consultancy to the petitioners in order to obtain loan and financial assistance from DHFL Company. According to the respondent, the parties had agreed

that the petitioners would pay amount of 3% of the final sanctioned amount of loan to the respondent. It is undisputed between the parties that 3% of the final sanction amount would come to Rs.60,00,000/-. According to the respondent, only an amount of Rs.30,00,000/- was paid by the petitioners leading to filing of the above suit for recovery. It is indicated that amount of Rs.10,00,000/- was negotiated and the respondent himself had restricted his claim to recovery of Rs.20,00,000/-.

3. Summons were issued on the said suit. The petitioners filed an application for grant of leave to defend, contending that by payment of Rs.30,00,000/- to the respondent final settlement of dues had been made by the petitioners and that there was no substance in the claim raised on behalf of the respondent. It was claimed that certain blank cheques were given by way of security to the respondent, which had been misused, resulting in their dishonour and proceedings under Section 138 of the Negotiable Instruments Act were also initiated by the respondent. Reliance was placed on certain documents showing sanction of loan by DHFL in two installments of Rs. Ten Crore each. It was claimed that assistance of the respondent was taken only for disbursement of loan of Rs. Ten Crore and the subsequent installment was directly negotiated by the respondent with DHFL.

4. In the impugned order, the Court below

found that the petitioners failed to demonstrate that payment of Rs.30,00,000/- on 16/11/2017, was towards final settlement of account between the parties.

5. This Court has also perused the material on record and it is found that loan amounts of Rs. Ten Crore each were sanctioned by DHFL on two occasions i.e. on 23/01/2017 and 22/06/2017. The payment of Rs.30,00,000/- made by the petitioners allegedly towards final settlement of dues with the respondent was admittedly made on 16/11/2017. If the agreement between the parties is perused, it is specifically stated that the respondent would be entitled to 3% of the final sanctioned amount of loan. It is obvious from the dates on record that payment on 16/11/2017, was made after the two occasions on which the loans were disbursed by DHFL. There is no document placed on record by the petitioners to show that when payment of Rs.30,00,000/- was made on 16/11/2017 to the respondent, it amounted to final settlement of dues of respondent.

6. In the face of such material, the Court below was justified in refusing unconditional leave to defend to the petitioner and imposition of condition in the impugned order appears to be reasonable, in the facts of the present case.

7. In view of above, the writ petition is found

to be without any merits and accordingly, it is dismissed.

JUDGE

MP Deshpande