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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.368 OF 2019**

M/s. Allied Automobiles and Anr. Applicants.
V/s
John Lazarus D'Souza Respondent.

Ms. Aneesa Cheema for the Applicants.
None for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 16, 2021

P.C.:-

1] For recovery of the amount towards the loan recoverable from the Applicants, summary proceedings viz. Summary Suit No.27 of 2015 came to be initiated. In the said suit, Applicants/Defendants moved an application under Order 37 Rule 3 sub-rule (5) seeking grant of leave to defend which came to be rejected vide impugned order dated 23/1/2019 by the City Civil Court, Dindoshi, Mumbai. As such, this Petition.

2] Submissions are, Plaintiff/Respondent was partner of the Firm/Defendant Nos. 1 and 2 and subsequently it was discovered that the Plaintiff has played certain fraud in the management of the

partnership firm. In the aforesaid backdrop, it is claimed that certain amount of money is due and payable from Plaintiff to the Firm and that being so nature of dispute can be inferred to be that of settlement of accounts of partnership firm.

3] In the aforesaid backdrop, claim is, there is sound defensible case in favour of the Applicants/Defendants and the court below ought to have granted unconditional leave to defend.

4] Further contention is, even if what has been stated in the plaint is accepted without admitting for the sake of argument, still fact remains that loan due and payable as has been claimed by the Plaintiff/Respondent is based on the disputed liability which the court below ought to have appreciated. It is further claimed that very claim in the plaint is based on illegal entries, is not appreciated by the court below.

5] Considered rival submissions.

6] Application came to be moved by the Applicants after Summons for Judgment under sub-rule (4) of Rule 3 of Order 37 came to be

served. Subsequent thereto, Applicants/Defendants moved an application for leave to defend under sub-rule (5). Though Applicants have claimed that there is strong defensible case in favour of the Applicants, however, upon perusal of the pleadings in the Plaint and other documentary evidence and the fact that the Applicants have denied liability to pay the amount, court below has considered the documents produced by the Respondent/Plaintiff at Exhibit-10 whereby it could be prima facie inferred that the Applicants have acknowledged the liability.

7] Apart from above, fact remains that the Respondent/Plaintiff claims to have retired from the Firm in 2004 and partnership firm i.e. Defendant No.1 came to be reconstituted. The alleged claim in the application for unconditional leave to defend that there was fraud practiced by the Plaintiff on the Firm and certain amount is receivable from the Plaintiff himself cannot be accepted for the purpose of granting unconditional leave as the claim raised therein appears to be time barred.

8] In the aforesaid backdrop, order of granting leave to defend on

condition of deposit of the amount does not appear to be unreasonable or contrary to scheme of sub-rule (5) of Rule 3 of Order 37 of CPC. That being so, no case for interference is made out. Revision Application fails and same stands dismissed. However, period for deposit of amount is extended by four weeks from today.

(NITIN W. SAMBRE, J.)