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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 68 OF 2021**

Mr. Javed Abdul Hamid Khan

....Applicant.

V/s

Mr. Pratik V. Shah

.....Respondent

Mr. Mohit P. Jadhav a/w Ms. Megha Shigavan a/w Ms. Kajal Chourasia for the Applicant.

Mr. Manoj Agre i/b Girish B. Kedia for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 12, 2021

P.C.:-

1] This Petition is by Defendant to summary suit for recovery wherein prayer of the Plaintiff for issuance of Summons for Judgment came to be rejected. However, Petitioner is granted conditional leave to defend, subject to deposit of Rs 2 lakhs as against the claim of Rs 4 lakhs made in the suit.

2] Learned Counsel for the Petitioner/Defendant would invite attention of this Court to the provisions of Order 37 Rule 2 so as to canvas that claim of the Respondent/Plaintiff cannot be entertained under the provisions of Order 37 particularly when same is based on

theory of hand-loan which is not covered under Rule 2. His further contention is, Plaintiff was using the property of the Petitioner/Defendant and has carried out certain modification in the same for which the amount of Rs 4 lakh was given.

3] Fact remains that the Petitioner/Defendant intends to defend the suit. In the aforesaid background, if we consider the condition to which Petitioner/Defendant is put to i.e. deposit of amount of Rs 2 lakh as against the suit claim of Rs 4 lakhs, same appears to be reasonable. The said claim is based on bank entry wherein amount of Rs 4 lakh was transferred to the Account of Petitioner/Defendant. Even if the word used in the notice and the plaint is 'loan', this Court however needs to be conscious to the fact that claim under Order 37 Rule 2 was required to be brought into action in relation to debt. That being so, contention that the suit claim cannot be covered under Order 37 Rule 2 is rejected.

4] This Court, vide order dated 8th April, 2021 directing notice, has put the Petitioner/Defendant to condition of deposit of Rs 2 lakhs (by mistake mentioned as Rs 2000/-) which admittedly the Petitioner has

not complied with till this date. Order 37 Rule 3 sub-rule (5) contemplates grant of leave to defend and in the present case Petitioner is not disputing that he intends to defend the suit which has prevailed before the Court below while putting him to condition of deposit of Rs 2 lakhs which appears to be quite reasonable. The aforesaid condition of deposit of Rs 2 lakh is based on admitted pleadings about transfer of amount of Rs 4 lakh in the Account of the Petitioner/Defendant by the Respondent/Plaintiff.

5] In the aforesaid backdrop, in my opinion, no case for interference in extraordinary jurisdiction is made out. Petition fails and same stands dismissed.

6] Time to deposit the amount of Rs 2 lakhs is extended by two weeks.

(NITIN W. SAMBRE, J.)