

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

WRIT PETITION NO.10861 OF 2016

Shri. Gautam Kishanchand Jethwani Petitioner

Vs.

Shri. Chandrashekhar Eknath Marathe Respondents
(since deceased) thru' LRs
Smt. Bharti Chandrashekhar Marathe
& Anr.

Mr. Sanjay Kshirsagar for Petitioner.

Ms. Kanchan Phatak i/by Mr. Nitin P. Deshpande for Respondent No. 1.

Coram : NITIN W. SAMBRE, J.

Date : 18th FEBRUARY, 2021

P.C.:

1. In a Special Summary Suit No. 118 of 2014, an application Exhibit 24 came to be moved under Order XXXVII, Rule 3, Sub-Rule (5) of Code of Civil Procedure seeking unconditional leave to defend, which is allowed vide impugned order dated 4th July, 2016. As such this petition.

2. The submissions are, in the pending proceedings under Negotiable Instruments Act, the Respondent-Defendant has already

signed the pursis thereby acknowledging the debt. Apart from above, cheques were issued pursuant to the settlement i.e. pursis dated 5th March, 2014, which were also dishonoured. Further contentions are that it can be inferred from the record that the liability under the debt is not in dispute, as there was no grievance about supply of material by the Petitioner to the Respondent- Defendant. As such, according to the learned counsel, unconditional leave to defend ought not to have been granted.

3. Ms. Phatak holding for Mr. Nitin Deshpande, learned counsel for Respondent No.1 would urge that the suit is pending since 2014 and hearing thereof can be expedited. The Petitioner-Respondent is already facing proceedings under the Negotiable Instruments Act.

4. Considered rival submissions.

5. The admitted fact is, the Respondent is facing proceedings under the provisions of Negotiable Instruments Act. The settlement pursis, which was tendered in the said criminal proceedings has not taken note of the said JMFC Court, before whom the proceedings under

the Negotiable Instruments Act are pending, as consequential order pursuant to settlement pursis is not passed. As such, it is difficult to infer that the debt is admitted as the pursis is not acted upon.

6. In the aforesaid backdrop, the fact that the trial Court has granted unconditional leave to defend can not be faulted with as whether the Respondent is prima facie liable to repay the amount to the Petitioner is already subjudice. In that view of the matter, no case for interference is made out. The petition fails. Dismissed.

7. Considering the fact that the Special Summary Suit No. 118 of 2014 is pending adjudication for more than six years, the hearing thereof is expedited.

8. The trial Court is directed to decide the said suit expeditiously and in any case within a period of one year from receipt of this order.

(NITIN W. SAMBRE, J.)