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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 131 OF 2020**

Shri Ranghnath Kisan Aarde

....Petitioner

V/s

Shri Shivaji Raosaheb Suryavanshi

.....Respondent

Mr. Girish R. Agrawal for the Petitioner

Mr. Dhanaji M. Jadhav for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 10, 2021

P.C.:-

1] In a summary suit for recovery of amount, while dealing with prayer of the Petitioner under Order 37 Rule 3 sub-rule (5) of the Civil Procedure Code vide impugned order dated November 25, 2019 Petitioner was granted leave, subject to deposit of Rs 1,40,000/- which is a cheque amount. Admittedly, Petitioner's acquittal in 2015 based on the cheque referred to in the impugned order under Negotiable Instruments Act, is not questioned by the Respondent/Plaintiff. Such acquittal is based on failure of the Respondent/Plaintiff to establish that he has discharged his initial burden i.e. to establish payment made to the Petitioner/Defendant. Of-course, it cannot be said that the Court while dealing with the prayer for leave to defend cannot put

parties to condition. However, the important criteria to which the Court below while dealing with such prayer is required to be sensitive is, availability of a strong defensible case in favour of the Petitioner/Defendant.

2] Learned Counsel for the Respondent/Plaintiff would be justified in claiming that findings recorded by the criminal court are not binding on the civil court while dealing with similar nature of claim. However, Court cannot be insensitive to such findings as such findings can be taken note of by the Civil Court particularly when the Plaintiff/Complainant has not questioned the same and the prosecution based on cheque in question which was dishonoured, resulted into acquittal is out of the same transaction.

3] Civil Court, in my opinion, ought to have considered the said findings at the stage at which the suit is pending i.e. where the Petitioner/Defendant has established a sound defensible case. Vide impugned order, the learned Court below while putting the Petitioner to condition of deposit of entire cheque amount, has not considered the same in the above background. To be more precise, consequences

of such acquittal and non-questioning of the same by the Respondent/
Plaintiff.

4] In the aforesaid backdrop, in my opinion, the condition granting leave to defend needs to be modified by directing the Petitioner to deposit 50% of the cheque amount i.e. Rs 70,000/- within a period of 12 weeks. Order accordingly.

5] Petition stands partly allowed in the above terms.

(NITIN W. SAMBRE, J.)