

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

WRIT PETITION NO.5097 OF 2019

Basantkumar Kapoorchand Jain Petitioner

Vs.

M/s Bhansali Infrastructure LLP Respondents
& Anr.

Mr. Sandesh Patil a/w Mr. Chintan Shah i/by Prithviraj S. Gole for
Petitioner.

Mr. Ajay Basutkar for Respondent Nos. 1 and 2.

Coram : NITIN W. SAMBRE, J.

Date : 1ST MARCH, 2021

P.C.:

1. In a Summary Suit No.12 of 2018, an application under Order XXXVII, Rule 3, Sub-Rule 5 C.P.C.. seeking permission to defend unconditionally came to rejected vide impugned order dated 29th October, 2018 by the 9th Joint Civil Judge, S.D., Thane.

2. Perusal of the application would reveal that the Petitioner has tried to put-forth bonafide defendable cause, but considering the

stream of Order XXXVII, Rule 3, Sub-Rule 5 C.P.C., the Court has not dealt with the contentions raised by the Petitioner/Defendant in the said application for grant of leave.

3. As such, the order impugned prima facie depicts that the material as was placed before the Court has not been considered while dealing with the prayer for Petitioner for grant of leave to defend.

4. In that view of the matter, the order dated 29th October, 2018 passed by 9th Joint Civil Judge, S.D., Thane in Summary Suit No. 12 of 2018 below Exhibit 6 is hereby quashed and set aside.

5. Application, Exhibit 6 would restore to the file of the said Court with a directions to decide the same expeditiously after considering probable defence raised by the Petitioner in Application, Exhibit 6.

(NITIN W. SAMBRE, J.)