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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 1155 OF 2022

ASHISH DATTARAM GATKAL

....PETITIONER

V/s.

NEELA VIPUL VITHLANI AND ANR

.....RESPONDENTS

Mr. Dharendra D. Singh advocate for the Petitioner

Mr. Sunil M. Kadam for Respondent nos. 1 & 2

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 4, 2022.

P.C.:

1) In a commercial Suit, the Trial Court granted conditional leave to defend in favour of the Petitioner vide order impugned dated 22/11/2021 which is questioned in the present Petition by the Defendant.

2) Submissions of learned counsel for the Petitioner Mr. Singh are, Petitioner, proprietor of M/s. Balaji Enterprises has never received the amount from the Plaintiff towards consideration of Skoda Superb car, which was never delivered. According to him, amount has gone to

the account of third person whereas the cheque bearing no. “241553” was not issued by the Petitioner for refund of the said consideration for Skoda car. To clarify, he would urge that said cheque was issued to third party with whom he was having business transactions. Said third party in connivance with the Plaintiff have misused the said cheque thereby forming basis for initiating Suit for recovery. As such, according to him, order impugned is not sustainable and the Petitioner is entitled for grant of unconditional leave under Order XXXVII Rule 3 of the Code of Civil Procedure, 1908.

3) With the assistance of both counsel, I have perused the documents which are placed on record in support of claim put forth by the Plaintiff and for opposing the prayer for grant of unconditional leave to defend.

4) Petitioner in categorical terms vide emails dated 25/10/2017 which were issued at 6.57 p.m. and 7.28 p.m. consented to be party to the transaction of deliver of Skoda car and assured refund as the commitment of delivery was not honoured.

5) Based on the same and having regard to the fact that the cheque bearing no. “241553” was issued by the Petitioner from his

account which contains the very said amount received towards consideration for delivery of Skoda car. The Court below in my opinion is justified in putting the Petitioner to condition.

6) No interference is called for in the extraordinary jurisdiction as no illegality could be noticed in the order impugned. Petition as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]