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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 452 OF 2022**

M/s Purav Construction & Anr Petitioners.
V/s
Smt. Smita Jagdish Yagnik and Anr. Respondents.

Mr. Rohan Sawant i/b Idris M. Vora for the Petitioners.
Mr. Jay Vakil a/w Zain Mookhi for the Respondents.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 14, 2022

P.C.:-

1] In a Summary Suit No.658 of 2018, while dealing with Summons for Judgment, claim of the Petitioners/Defendants for grant of unconditional leave to defend came to be allowed, subject to deposit of principal amount of Rs 24 lakhs. As such, this Petition.

2] Mr. Sawant, learned Counsel for the Petitioners would strenuously urge that transaction between the parties is not money lending and that being so, suit under Section 13 of the Money Lending Act, 2014 is not maintainable. In addition to above, according to him, suit should have been in the nature of commercial dispute and Court

which has passed the judgment impugned is not armed with jurisdiction to exercise exercise power to entertain summary suit, as the claim in the suit is above Rs 24 lakhs. His contentions are, summary suit is not maintainable based on honoured cheque. He would claim that unless there is concluded contract, small cause suit for recovery of the amount is not maintainable. Apart from above, it is claimed that suit is time barred.

3] While countering aforesaid submissions, Mr. Vakil, learned Counsel appearing for Respondents/Plaintiffs would urge that Court below in detail has dealt with all the aforesaid issues and the suit is verymuch maintainable. According to him, there is enough material to demonstrate that liability is in fact admitted by the Petitioners in their own record and that being so, present Petition is liable to be dismissed.

4] Learned Counsel for the Petitioners so as to substantiate his claim that suit is not maintainable based on honoured cheque and unsettled account, has drawn support from the Full Bench Judgment of this Court in the matter of *Jyotsna K. Valia vs. T.S. Parekh and Co.*

reported in **2007(4) Mh.L.J. 517**. According to learned Counsel, paragraphs 25 to 28 are worth referring to. According to him, there is neither concluded contract between the parties nor there is contract in writing and that being so, summary suit is not maintainable. As such, Petitioners have strong case to defend. That being so Petitioners are entitled for grant of unconditional leave to defend.

5] As far as aforesaid submissions are concerned, it is required to be noted that late husband and father of Plaintiff No.1 transferred the amount of Rs 24 lakhs to the account of Defendants vide two cheques i.e. one of Rs 10 lakhs dated 14th October, 2014 and the other of Rs 14 lakhs dated 14th September, 2015. The present Petitioners paid interest at the rate of rs 14% per annum and accordingly interest was deposited in the account of the Plaintiffs starting from 5th November, 2014 at the rate of Rs 10,479/-. The second transaction between the parties took place on 14th September, 2015 and the suit was brought into action within three years for recovery on 23rd April, 2018. As such, prima facie, it is demonstrated that suit is within limitation and transaction appears to be friendly loan transaction. Apart from above, documentary evidence brought on record, particularly bank account

entries, Income Tax Returns categorically demonstrate that Petitioners have acknowledged and shown the amount to be payable to the tune of Rs 26,48,066/- to the husband of original Plaintiff No.1. As such, aforesaid material is sufficient to infer that there was concluded contract between the parties and the suit was well within limitation. In that view of the matter, contention that suit is barred by limitation and suit is based on honoured cheque cannot be accepted. Rather, there is enough material on record to infer strong case in favour of the Plaintiffs. That being so, no case for interference under extraordinary jurisdiction is made out. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)