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

**CIVIL REVISION APPLICATION NO. 80 OF 2022
WITH
INTERIM APPLICATION NO. 1084 OF 2022
IN
CIVIL REVISION APPLICATION NO. 80 OF 2022**

GEETA JALA RATHOD

....APPLICANT

V/s.

**JAYANTILAL CHOGALAL DOSHI
AND ORS**

.....RESPONDENTS

Mr. Mayur Khandeparkar a/w Mr. Rupesh Geete a/w Ms. Priya
Chaurasia Advocate for the Applicant
Mr. Bharat Joshi Advocate for the Respondent no. 1

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 2, 2022.

P.C.:

1) This Petition is by Defendant no. 4 to Commercial Suit No.
662/2021 (Summary Suit No. 61/2019) which is for recovery of
amount of Rs. 1 Crore.

2) In Summons for Judgment, Applicant-Defendant no. 4 took out
an Application under Order XXXVII Rule 3(5) of Code of Civil

Procedure, 1908 for grant of unconditional leave to defend which is partly allowed vide impugned order dated 07/12/2021 whereby Applicant is directed to deposit an amount of Rs. 75,00,000/- within 12 weeks subject to which leave to defend is permitted.

3) Learned counsel for the Petitioner would invite attention of this Court to the nature of transaction, deed of dissolution of partnership and the mode and manner of proceedings conducted by the Plaintiff against Defendants so as to depict the policy of pick and chose. My attention is invited to the fact that Firm i.e. Respondent no. 1 was dissolved vide Deed dated 01/03/2017 and as such, Deed of Retirement is not disputed by the Plaintiff. It is claimed that other partners i.e. Defendant nos. 2 & 3 are absolved of their liability, particularly when Defendant no. 3 is granted unconditional leave to defend who happened to be husband of the Applicant-Defendant no. 4 on the ground that Suit transaction was prior to his impleadment as partner. A further contention is, Defendant no. 2 was and is in-charge of the running of affairs of Defendant no. 1 Firm now which has become a propriety concern, he claimed to have admitted the transactions with the Plaintiff Company and has come out with a

case of already discharge of the liability during the course of the business.

4) As such, according to learned counsel for the Applicant, considering the fact that there exist a Deed of Dissolution/Retirement of partners wherein Applicants stood retired as on 01/03/2017 and Defendant no. 2 has taken over entire liability of Defendant no. 1 Firm, Applicant is entitled for unconditional leave to defend.

5) Learned counsel for Respondent-Plaintiff would support the impugned order on the ground that Plaintiff has every intention and shall be accordingly proceeding against Defendant no. 2, the then partner of the Firm and present proprietor. He would claim that admitted transactions could be inferred from the documentary evidence which is formed to be basis for putting the Petitioner to a condition of deposit. He would claim that conduct of Petitioner-Defendant no. 4 in dissolving the Firm is contrary to the scheme of Section 32 of the Indian Partnership Act as neither Plaintiff was put to notice about the same nor a public notice about dissolution was given. As such, he has sought dismissal.

6) Considered submissions.

7) It is difficult to infer from the available material as to what prompted the Court to fasten the liability on the Petitioner to the extent of Rs. 75,00,000/- particularly when Defendant no. 2 and present Defendant were partners in the Firm. Based on the terms of Partnership Deed or Deed of Dissolution of Firm does not in express terms provide for share of the Petitioner to the extent of 3/4th in the assets and profit of the partnership Firm.

8) It is worth to mention here that counsel for Respondent-Plaintiff was justified in inviting attention of this Court to the provisions of Section 32 of the Indian Partnership Act. While dissolving partnership of which the Petitioner was a partner, as the transaction took place between Plaintiff and Defendants, neither the Plaintiff was given notice of such dissolution nor a public notice of such dissolution is published. At least no such material is brought on record to that effect.

9) Court below while passing the order of deposit in the matter of grant of conditional leave was sensitive to the admitted business transactions and also implied liability as claimed by Plaintiff against Defendant Firm of which admittedly Petitioner was a partner.

10) In the aforesaid background, evidence on record prompts this Court to believe that Petitioner should be directed to deposit amount of Rs. 50,00,000/- i.e. 50% of the amount claimed in the Suit as she was partner with Defendant no. 2 in Defendant no. 1 Firm at the time of alleged transaction.

11) Conditional leave granted to the Applicant is subject to deposit of Rs. 50,00,000/- within period of 12 weeks from today as ordered. Application stands partly allowed.

12) In view of disposal of Revision Application, Interim Application also stands disposed of.

13) Needless to clarify that observations made herein above are prima facie in nature and shall not influence merits of the matter.

[NITIN W. SAMBRE, J.]