

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

WRIT PETITION NO.9286 OF 2019

Musharaf Khan Haroon Khan

..Petitioner

Versus

M/s. Maa Kunjal Agency

Prop. Anand Satyanarayan Pareek

..Respondent

Mr. Rameshwar N. Gite, for the Petitioner.

None for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 4th JANUARY, 2022

PC.

1. Counsel for the petitioner has placed on record the affidavit of service. None appears for the respondent/original plaintiff. The respondent initiated summary suit under Order XXXVII of the Code of Civil Procedure ("CPC" for short) being Summary Civil Suit No.63 of 2018 for recovery of Rs.23,69,811/-.

2. In response to the summons for judgment, petitioner/defendant sought unconditional leave to defend under Order XXXVII Rule 3 of CPC which came to be partly allowed vide impugned order dated 22nd April, 2019 thereby directing the petitioner/defendant to give cash security or bank security of an amount of Rs.19,50,827/-.

3. Contention of Mr. Rameshwar Gite, learned counsel for the petitioner/original defendant is the Court below misconstrued the pleading thereby recording and finding that petitioner has admitted liability to the extent of Rs.19,50,827/-. So as to substantiate the said contention, he has invited my attention to the pleadings in paragraph 6 of the affidavit dated 14th February, 2019.

4. As far as the pleadings are concerned, perusal thereof reflects that the petitioner has not given any specific admission, rather the pleadings are clarificatory in nature. The petitioner has sought to explain the transaction between the parties which fact is overlooked by the Court below while passing order impugned. In the aforesaid background, in my opinion, the order impugned is not sustainable. As such, the order impugned dated 22nd April, 2019 passed by Civil Judge, Senior Division, Ichalkaranji in Summary Civil Suit No.63 of 2018 below Exh.16 is hereby quashed and set aside with further direction that Exh.16 be decided afresh after hearing the respective parties.

5. The petition stands partly allowed in the aforesaid terms.

[NTIN W. SAMBRE, J.]