

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 3863 OF 2021

Parmanandan s/o P. Ganpathi Nayanar

vs.

Vikram Somaji Dhabale and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. H. I. Kothari, Advocate for petitioner.
Mr. R. I. Agrawal, Advocate for respondent Nos.1 and 2.

CORAM : MANISH PITALE J.

DATE : 06/09/2022

Heard learned counsel for the parties.

2. By this petition the petitioner (original plaintiff) has challenged order dated 25/03/2021, passed by the Court of Civil Judge, Junior Division, Kamptee in Summary Civil Suit No.03 of 2019, whereby unconditional leave to defend is granted to the respondents.

3. The principal grievance of the petitioner is that the application seeking unconditional leave to defend ought not to have been granted for the reason that not even a semblance of a case was made out by the respondents. It is submitted that mere denial of

signatures on the document in question could not be a ground to grant unconditional leave to defend and that appropriate condition ought to have been imposed. The learned counsel for the petitioner insisted that the Court below ought to have imposed the condition of depositing the loan amount i.e. Rs.4 Lakhs as a condition for granting leave to defend.

4. On the other hand, the learned counsel for the respondents has relied upon para 19 of the impugned order which reads as follows :-

“19] The defendants have specifically and categorically contended that they have never taken loan from the plaintiff. The written contract does not bear their signatures nor the signatures of the witnesses. Witnesses Rekha Talmale and Suryabhan Talmale have filed their affidavits (ex.15 and 16) on record and stated, in unison, that Permanand Nayanar called them in his house and obtained their signatures over one blank paper. No such loan transaction was ever taken place in their presence. On this score alone, without delving into other grounds of objection, I may state here that the defendants have succeeded to raise a substantial defence and triable issue thus, they are entitled to leave to defend. Hence, I answer point No.1 in the affirmative, and in answer point No.2, I pass the following order:”

5. The learned counsel for the respondents has also relied upon the judgment of this Court in the case of ***Smt. Sheel Arora vs. Sanjay Fetah Bahadur***

Srivastava AIR 2004 Bombay 99, to contend that once the signature on the document in question was denied and this found support in specific affidavits filed by alleged witnesses to the said document, unconditional leave to defend was correctly granted by the Court below.

6. The material available on record was considered in the backdrop of submissions made on behalf of the rival parties. It is found that the suit for recovery filed by the petitioner is based on a specific document wherein it is recorded that amount of Rs.4 Lakhs was given to the respondents and that they had undertaken to return the same and further that if there was failure on their part to return the amount, the petitioner was at liberty to institute appropriate proceedings in a Court of law. The document is alleged to have been signed by the respondents as well as the witnesses. The respondents have denied their signatures on the document in question and the Court below has referred to two affidavits filed by the alleged witnesses stating that their signatures were obtained on blank paper.

7. Considering the position of law laid down by this Court in the aforementioned judgment and the averments made on behalf of the respondents in

the application seeking unconditional leave to defend, the finding rendered at paragraph 19 of the impugned order cannot be said to be unreasonable. Therefore, interference in the impugned order is not warranted.

8. Nonetheless, it is pointed out by the learned counsel for the petitioner that the petitioner is a senior citizen aged about 79 years and that therefore, the proceedings before the Court below ought to be expedited.

9. In view of the above, the Writ Petition is dismissed. The Court below is directed to expedite the proceedings in Summary Civil Suit No. 03 of 2019 and to decide the same at the earliest, preferably within three months from today.

JUDGE