

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4704 OF 2021

Sou. Asha w/o Yadaorao
Wankhede, aged about 52 years,
Occupation Household, R/o lot No.
11, Sai Nagar, Opposite to C.M.D.S.
College, Godhani (Sim), Umred
Road, Nagpur.

.... **PETITIONER**

// **VERSUS** //

Shri Ashok Shankarrao Nagmote,
aged 52 years, Occupation : Retired,
R/o 47, Mahatma Gandhi Nagar,
Nagpur – 440 034

.... **RESPONDENT**

Shri Prakash Randive, Advocate for the petitioner.
Shri A.D. Patil, Advocate for the respondent.

CORAM : ROHIT B. DEO, J.
DATED : 10.03.2022

ORAL JUDGMENT :

Heard. **RULE.** With consent, the petition is heard finally.

2. The petitioner is the defendant in Summary Civil Suit 83 of 2019, whose application seeking leave to defend, is rejected by the Trial Court. Summary Civil Suit 83 of 2019 is instituted by the respondent on the assertion that towards repayment of amount borrowed, the defendant issued

a cheque for Rs.4,00,000/- (Rupees Four Lakhs only), which was dishonored.

3. In response to the judgment/summons, the defendant filed an affidavit contending that the suit is false and vexatious and that he has already lodged a complaint to the Police Station, Hudkeshwar on 17.02.2017, that the cheque dated 06.02.2017 is lost.

4. The learned Trial Judge declined to grant leave on the premise, that it is manifest from the documents placed on the record, that the defense that the cheque was stolen, is dishonest and a moonshine.

5. I entirely agree with the reasons recorded by the learned Trial Judge. The defendant addressed a communication to the Branch Manager, State Bank of India, Saoner Branch requesting that the cheque issued by her in favour of the plaintiff Mr. Ashokrao Nagmote dated 06.02.2017 for Rs.4,00,000/- (Rupees Four Lakhs only), should not be honored. The stop payment instructions are issued in respect of the very same cheque, which is the basis of the summary suit. In the teeth of such a communication, the defence, that the Hudkeshwar Police Station is already informed vide complaint dated 17.02.2017 that the cheque is lost, is clearly dishonest.

6. Be it noted, that in the communication addressed to the Branch Manager, State Bank of India, Saoner, the defendant admits to have issued the cheque 063054 for Rs.4 lakhs (Rupees Four Lakhs only) in favour of the plaintiff Mr. Ashokrao Nagmote, on 06.02.2017. The defendant further, with-

out assigning any reason, issued stop payment instructions. The recitals in the said communication cannot be reconciled with the alleged complaint to the Police Station lodged on 17.02.2017, which states that the cheque is lost on 03/02/2017.

7. In this view of the mater, I see no reason to interfere with the order of the learned Trial Judge, much less in writ jurisdiction.

8. The petition is dismissed.

(ROHIT B. DEO, J.)

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