

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9524 OF 2023

Shailesh Baburao Kamble

Petitioner

Versus

Devkant Balwant Meshram

Respondent

Mr. S.S. Jangada, Advocate for the petitioner.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd AUGUST, 2023

ORDER :

1. Leave to correct prayer clause. Correction to be carried out forthwith.

2. Petitioner is aggrieved by the order passed learned Civil Judge Junior Division, Aurangabad, below Exhibit-22 in Summary Civil Suit No. 359/2022, thereby rejecting the application filed by the petitioner/defendant for leave to defend under Order XXXVII Rule 3 and 4 of CPC.

3. Respondent/plaintiff filed summary suit for recovery of amount of Rs. 1,50,000/- against the petitioner/defendant. In response to suit summons, petitioner/defendant appeared on 06.05.2023. He filed application Exhibit-22, under Order XXXVII

Rule 3 and 4 of CPC, on 15.06.2023 contending that '*along with notice, the plaintiff is required to file his affidavit stating grounds as to how defendant has no ground for defending the suit. That, the compliance of such affidavit is not made. That, even otherwise defendant is humbly praying that, this matter involve question of law and fact to be considered. Hence to serve the ends of justice, permission/leave to defendant may kindly be allowed*'.

4. Plaintiff objected to the said application by filing say contending that the application for leave to defend is not moved within ten days after service of summons for judgment. Summons for judgment is served on defendant on 21.04.2023 and the application for leave to defend is moved on 15.06.2023. He therefore, prayed for rejection of the application. Trial Court after hearing the parties rejected the application. Hence, the present petition.

5. Learned advocate for the petitioner assailed the impugned order contending that application Exhibit-22 is not happily worded and/or properly drafted, but that cannot be a ground for rejection of said application as the petitioner has good defence. He submitted that defendant has also filed police

complaints against the plaintiff. All these facts need to be brought before the Trial Court, therefore he submits that leave may be granted to the defendant to raise his defence.

6. Heard the learned advocate for the petitioner. Perused the memo of writ petition, annexures and the impugned order.

7. From perusal of application filed by the petitioner it is clear that he has not made out any ground much less sufficient ground which entitles him leave to defend. There is nothing on record to show that petitioner/defendant has substantial defence. Fact remains that application is not filed within stipulated time. For these reasons, no fault can be found with the order impugned in the present petition. There is no illegality or perversity in the order impugned in the present petition. No case is made out by the petitioner to warrant interference in the extra ordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]