

SA Pathan

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

WRIT PETITION NO.14606 OF 2022

Usha Mahadev Chougule ... Petitioner

V/s.

Nagbhushan H. K. S/o H. K.
Krushnamurti ... Respondent

Mr. Nanaso Vishnu Gaikwad, for the Petitioner.

Mr. Kalpesh U. Patil i/by Nalavade & Chavan Law
Associates, for the Respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 5, 2023

P.C.:

- 1.** The petitioner (original plaintiff) is challenging order passed by the Trial Court granting unconditional leave to the defendant in summary suit No.29 of 2021.
- 2.** According to the petitioner, the claim is based on negotiable instruments of the cheque.
- 3.** On perusal of the impugned order, it appears that the Trial Court apart from referring to precedents has not at all considered the facts of the case. In the impugned order, the Trial Court has recorded submissions of the parties and after referring to precedents the Trial Court has arrived at conclusion that the defendant has raised triable issue. No reasons are assigned to arrive on the finding of triable issue. It was expected from the Trial

Court to consider the facts of the case material and defence raised by the defendant and documents produced by the plaintiff and defendant in support of their case. After referring to such material, the Court must arrive at conclusion as to whether for triable issue is raised or not and shall consider the suit in accordance with the parameters laid down by the Apex Court in the case of **B. L. Kashyap And Sons Ltd. Vs JMS Steels and Power Corporation and Another** reported in 2022 DGLS (SC) 57.

4. In view of the aforesaid reasons, the impugned order cannot be sustained. Hence, pass following order:

a) The impugned order dated 2 August 2022 passed by the 6th Joint Civil Judge, Senior Division, Kolhapur below Exhibit 37 in Summary Suit No.29 of 2021 is quashed and set aside.

b) The Trial Court shall hear both sides on the point of granting of leave and thereafter, shall pass appropriate order on the point of granting of leave within four weeks from the date of appearance of the parties. The parties shall appear before the Trial Court on 7 September 2023.

5. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)