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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1650 OF 2023

Sanjay Jambu Jakate

.. Petitioner

Versus

Lad Group Industries and Anr.

.. Respondents

.....

- Mr. A.P. Steenson a/w. Mr. Shivan Laturiya and Mr. Utkarsh Sanadi i/by APS Law Associates for Petitioner.
- Mr. Nikhil Pawar, Advocate for Respondent No.1.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 13, 2023.

P.C.:

1. Heard Mr. Steenson, learned Advocate for Petitioner and Mr. Pawar, learned Advocate for Respondent No.1 for some time.

2. Perused the impugned order passed below Exhibit-19 in Summary Civil Suit No.90 of 2020 dated 14.10.2022.

3. The Application has been filed by Petitioner (Orig. Defendant in Summary Suit No.90 of 2020) under Order XXXVII Rule 3 of the Civil Procedure Code, 1908 for grant of leave to defend. The transaction between the parties has been noted by the learned Trial Court with respect to which there is no dispute. However, it is seen that the Petitioner has also not denied issuing the signed blank cheques as security in favour of the Plaintiff (Respondent herein) in respect of the transaction of goods which had taken place between 2015 to 2017.

4. Mr. Steenson would submit that in so far as the transaction is concerned, the said transaction has been completed in so far as the Defendant is concerned. However, taking advantage of the fact that signed blank cheques were given to the Plaintiff, the Plaintiff has now put the dates of 29.01.2020, 05.02.2020 and 17.02.2020 on the said signed blank cheques and have sought to encash them. He would submit that *prima facie* if that be the case then the dates put by the Plaintiff would fall outside the ambit of the limitation period considering the date of transaction which is undisputed.

5. Mr. Pawar would submit that considering that Petitioner has not denied the transaction and delivery of goods as also issuing the said cheques, Petitioner would not have a valid defence. He would further submit that the submission of Petitioner that the said cheques were given for security is not properly explained as also the transaction for security is also not explained by him.

6. Be that as it may, the issue with respect to the transaction would be a triable issue and a question of fact. However, at this stage, I am required to look into the fact whether the transaction as unfolding before the learned Trial Court would require the Trial Court to pass the impugned order or otherwise.

7. The learned Trial Court has returned findings in paragraph Nos.8 and 9 of its judgment and concluded that considering the overall

position, Defendant furnish a bank guarantee of Rs.4,71,103/- as a condition precedent for grant of leave to defend. However, looking at the total amount claimed by the Plaintiff before the learned Trial Court which is in the region of Rs.24,00,000/-, *prima facie* it is seen that the learned Trial Court has allowed the Defendant a substantive leverage considering the timeline and the dates. That itself shows that the *lis* between the parties is triable and the question of fact needs to be determined on the basis of evidence to be let by both the parties. I am therefore inclined to agree with the submissions made by the Petitioner.

8. After the submissions were made and arguments were concluded, Mr. Pawar requested the Court that he needed to file his Affidavit-in-Reply. The request of Advocate Mr. Pawar is rejected as the same is made only after the submissions were made by him and the Court was in the process of dictating the order.

9. In view of the above observations and findings, the impugned order is not sustainable. The condition imposed by the learned Trial Court while granting leave to defend stands set aside. The impugned order dated 14.10.2022 is thus quashed and set aside.

10. The issue of limitation undoubtedly will be kept open and all contentions of the parties including the Petitioner and Respondent herein are expressly kept open.

11. The learned Trial Court shall not be influenced by any observations and findings in the impugned order at the time of disposal of the suit.

12. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]