

SA Pathan

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

**WRIT PETITION NO.12476 OF 2023**

Aditya Developers & Ors

... Petitioners

**V/s.**

Mitesh Rajnikant Shah

... Respondent

SHABNOOR  
AYUB  
PATHAN  
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Mr. Birnardo Rais a/w Mr. Shailesh Rai i/by Mr.  
Shailesh Rai, for petitioners.

Ms. Henna P Shah & Mr. Mauli K Tanna, for  
respondent.

**CORAM : AMIT BORKAR, J.**

**DATED : OCTOBER 9, 2023**

**P.C.:**

1. Challenge in this writ petition is to the order dated 1 February 2023 passed by the City Civil Court granting conditional leave to the defendant on deposit of Rs.25 lakh within three months.

2. According to the the plaintiff, in the year 2014, the defendants had approached the plaintiff with business proposal for supply and distribution of construction chemicals manufactured by the plaintiff. The plaintiff advanced sum of Rs.25 lakh to defendant through RTGS. The amount was credited in the defendant No.1's account on 15 January 2014.

3. According to the plaintiff, defendants paid quarterly interest to the plaintiff till 1 January 2018, copies of ledger accounts of

defendant No.1 in books were produced before the Trial Court in support of the said contention. In January, 2018, the defendant issued a cheque dated 26 March 2018 for payment of interest which was dishonored on 3 April 2018. It is averred that on 1 April 2017 and thereafter, defendants confirmed their account in books of the plaintiff. The defendants paid interest by deducting of TDS for financial year 2017, 2018 till 2019.

4. On failure to repay the principal amount, the plaintiff issued legal notice on 30 December 2021 calling upon defendants to pay Rs.25 lakh towards principal loan amount and Rs.12 lakh towards outstanding interest accrued from 1 January 2018 till December 2021 @ 12%.

5. Defendants in response to Summons for Judgment appeared in the suit and filed an application seeking leave to defend. According to defendants, suit claim is time barred.

6. The Trial Court passed order based on material on record held that the defendants have not disputed the fact that they received a sum of receipt of Rs.25 lakh from the plaintiff. It is also not disputed that till 31 December 2017, defendants continued to pay interest on the loan transaction. Based on confirmation of ledger accounts, the Trial Court held that the suit is not barred by limitation. It appears from Exhibit 'F' annexed to the plaint that the defendants have confirmed transactions and accounts of the financial year 1 April 2017, 1 April, 2018 and 1 April 2019. The suit is filed on in February 2021.

7. On overall considering the reasons stated above, in my

opinion, the exercise of discretion by the Trial Court directing defendants to pay principal amount of Rs.25 lakh out of suit claim of Rs.37 lakh is *not* suffering from any legal infirmity. I, therefore, find there is no merit in the writ petition.

8. The writ petition is, therefore, dismissed. No costs.

**(AMIT BORKAR, J.)**

Note:- This order is modified as per order dated 20 October 2023. Correction in paragraph 7 is shown italicize.