

Nikita

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

WRIT PETITION NO.10366 OF 2023

Ravi R. Mekala	... Petitioner
V/s.	
Arti Digambar Honrao	... Respondent

NIKITA
KAILAS
DARADE

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NIKITA KAILAS
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Date: 2023.08.23
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Mr. Irvin D'souza for the Petitioner.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 22, 2023

P.C.:

1. Challenge in this petition is to the order dated 10th December 2021 passed by City Civil Court Mumbai and order dated 20th April 2023, in Review Petition No 136 of 2022. The respondent filed summary suit No.901 of 2015, based on promissory note issued by the petitioner. According to the plaintiff, he gave friendly loan of Rs.5,00,000/- to the defendant. The defendant had issued demand promissory note along with cheque. On presentation, cheque were dishonoured. Since, there was failure to repay the amount The plaintiff filed summary suit for recovery of Rs.5,00,000/- along with the interest.

2. In the said suit, the plaintiff took out summons for judgment. Petitioner/Defendant filed written statement and sought leave to defend. Leave to defend was sought on the ground that Rs.5,00,000/- were never paid to the defendant. There was

relationship of employer and employee. By misusing the said relationship, the plaintiff got signature of defendant on the promissory note and the cheque. The signatures on the promissory note and cheques was under coercion.

3. Therefore, the plaintiff sought unconditional leave to defend. The City Civil Court by order dated 10th December 2021, granted conditional leave to defendant, subject to defendant depositing amount of Rs.2,50,000/- within one month. On deposit of amount, defendant was granted liberty to file written statement. The defendant filed review application bearing No. 136 of 2022. The Trial Court by order dated 20th April 2023, dismissed the review application. The petitioner has, therefore, filed present writ petition challenging both orders.

4. Learned advocate for the petitioner submitted that the petitioner has raised a triable issue and is likely to succeed in the suit. Therefore, petitioner has made out a case for grant of unconditional leave.

5. According to him, considering the defense raised, the Court below was justified in directing the petitioner to deposit 50% of the amount.

6. I have considered the statements and scrutinized the impugned orders, and other material produced on record by the petitioner.

7. Insofar as, maintainability of summary suit is concerned, there is no dispute about following factors:

- a) There is concluded contract.
- b) There is promise to pay by the defendant.

8. The parameters for grant of leave under order 37 of Code of Civil Procedure, 1908 have been laid down by the Apex Court in the case of **B.L Kashyap and Sons Limited v. JMS Steel and Power Corporation**, (2022) 3 SCC 294, the Apex Court after adverting to the decision in the case of **IDBI Trusteeship Services Ltd. v. Hubtown Ltd.** (2017) 1 SCC 568 expounded the law in paragraph No.33 as under:

“33. It is at once clear that even though in the case of *IDBI Trusteeship*, this Court has observed that the principles stted in paragraph 8 of *Mechelec Engineers’* case shall stand superseded in the wake of amendment of Rule 3 of Order XXXVII but, on the core theme, the principles remain the same that grant of leave to defend (with or without conditions) is the ordinary rule; and denial of leave to defend is an exception. Putting it in other words, generally, the prayer for leave to defend is to be denied in such cases where the defendant has practically no defence and is unable to give out even a semblance of triable issues before the Court.

33.1 As noticed, if the defendant satisfies the Court that he has substantial defence, i/e., a defence which is likely to succeed, he is entitled to unconditional leave to defend. In the second eventuality, where the defendant raises triable issues indicating a fair or bonofide or reasonable defence, albeit not a positively good defence, he would be ordinarily entitled to unconditional leave to defend. In the third eventuality, where the defendant raises triable issues, but it remains doubtful if the defendant is raising the same in good faith or about

genuineness of the issues, the Trial Court is expected to balance the requirements of expeditious disposal of commercial causes on one hand and of not shutting out triable issues by unduly severe orders on the other. Therefore, the Trial Court may impose conditions both as to time or mode of trial as well as payment into the Court or furnishing security. In the fourth eventuality, where the proposed defence appears to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also of payment into the Court or furnishing security or both, which may extend to the entire principal sum together with just and requisite interest.

33.2 Thus, it could be seen that in the case of substantial defence, the defendant is entitled to unconditional leave; and even in the case of a triable issue on a fair and reasonable defence, the defendant is ordinarily entitled to unconditional leave to defend. In case of doubts about the intent of the defendant or genuineness of the triable issues as also the probability of defence, the leave could yet be granted but while imposing conditions as to the time or mode of trial or payment or furnishing security. Thus, even in such cases of doubts or reservations, denial of leave to defend is not the rule; but appropriate conditions may be imposed while granting the leave. It is only in the case where the defendant is found to be having no substantial defence and/or raising no genuine triable issues coupled with the Court's view that the defence is frivolous or vexatious that the leave to defend is to be refused and the plaintiff is entitled to judgment forthwith. Of course, in the case where any part of the amount claimed by the plaintiff is admitted by the defendant, leave to defend is not to be granted unless the amount so admitted is deposited by the defendant in the Court.

33.3 Therefore, while dealing with an application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the rule or that the leave to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues, with the defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave. It gets perforce reiterated that even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated about could be imposed while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the defendant fails to show any genuine triable issue and the Court finds the defence to be frivolous or vexatious.”

9. On perusal of the defense raised by the petitioner, it appears that the signature on the promissory note is admitted by the petitioner. However, according to him, the signature was obtained by misusing relationship of employer and employee. Therefore, in my opinion, that the petitioner has raised triable issue but it is doubtful, if the petitioner is raising same in the good faith and, therefore, the Trial Court was well within its power to direct the petitioner to deposit 50% of the amount.

10. I did not find any error in the order of the Trial Court in exercising positive jurisdiction. No interference under Article 227 of the Constitution of India is called for.

11. The writ petition stands dismissed.

(AMIT BORKAR, J.)