

AGK

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

WRIT PETITION NO.10899 OF 2018

Krishna Govind Bahadarpurkar

... Petitioner

V/s.

Girish Ramchandra Deshpande

... Respondent

ATUL
GANESH
KULKARNI
Digitally signed by
ATUL GANESH
KULKARNI
Date: 2023.11.01
14:25:04 +05:30

Mr. Jaydeep Deo for the petitioner.

Mr. A.P. Wachasundar for the respondent.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 1, 2023

PC.:

- 1.** The petitioner is original defendant in Summary Suit No.990 of 2010 filed for recovery of amount of Rs.17,20,000/-.
- 2.** According to the plaintiff, he advanced sum of Rs.15 lakh in cash in three installments in the months of January, February and March 2000. The defendant, therefore, executed an agreement on 27 April 2000 in presence of witness wherein he acknowledged receipt of Rs.15 lakh from the plaintiff in cash. He promised to repay the amount within five years.
- 3.** According to the plaintiff, no payment was made before 31 January 2007 as promised by the defendant and when the plaintiff insisted for repayment, the defendant brought with him a blank cheque book having 20 leafs and signed all of them in presence of

the plaintiff. According to the plaintiff, the defendant gave verbal authority to the plaintiff to fill up the amount, figures and words and name of the plaintiff as also the dates for period from 3 February 2007 till June 2008. He further promised to pay balance amount of Rs.5,05,000/- towards interest from the year 2020 till realization. According to the plaintiff, therefore, cheques issued in February 2007 would amount to acknowledgment under Section 18 of the Limitation Act, 1963 as period of limitation will start from 23 April 2005.

4. The defendant contested the suit by denying transaction with the plaintiff. According to him, he had obtained a loan from the Bank of Maharashtra which was repaid on 26 June 2014. The last installment of said loan was paid by the uncle of the plaintiff and the cheques bearing Nos.881551 to 881575 drawn on the State Bank of India, Golibar Maidan Branch, Pune was handed over to the uncle of the plaintiff in the year 2007. In support of his contention, he placed reliance on communication issued by the Bank of Maharashtra dated 5 April 2007. According to him, therefore, the claim lacks bona fide as the plaintiff in paragraph 8 has specifically stated that the defendant signed all 20 cheques in his handwriting.

5. The Trial Court by the impugned judgment granted conditional leave to defend by directing defendant to pay Rs.15 lakh within two months.

6. Learned advocate for the defendant, therefore, submitted that the averment in paragraph 8 of the plaint that the defendant

brought blank cheque book having 20 leafs and signed all of them in presence of the plaintiff cast doubt about the claim of the plaintiff, particularly when according to the plaintiff entire amount was paid in cash.

7. Per contra, learned advocate for the plaintiff submitted that the agreement executed by the defendant on 24 April 2000 acknowledges receipt of amount amount and 20 cheques have been handed over by the defendant. In support of his contention, he relied on the judgements in **IDBI Trusteeship Services Ltd. v. Hubtown Ltd.** reported in (2017) 1 SCC 568, **B.L. Kashyap and Sons Ltd. v. M/s. JMS Steels & Power Corporation** reported in AIR 2022 SC 785, and **Avtar Singh v. Didar Singh** reported in AIR 2023 P&H 87.

8. Having considered the submissions on behalf of the parties, in my opinion, the writ petition needs to be decided in the light of parameters laid down by the Apex Court in **IDBI Trusteeship Services Ltd.** (supra). In paragraph 17, the Apex Court laid down parameters for consideration of grant of leave in suits governed by Order 37 of the Code of Civil Procedure, 1908. The parameters laid down by the Apex Court are as under:

“17. Accordingly, the principles stated in para 8 of *Mechelec Engineers & Manufactures v. Basic Equipment Corpn.*, (1976) 4 SCC 687 will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judge in *Mikhiram (India) (P) Ltd. v. Chamanlal Bros*, AIR 1965 SC 1698 : (1966) 68 Bom LR 36, as follows:

17.1 If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to

succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.

17.2 If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is *ordinarily* entitled to unconditional leave to defend.

17.3 Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4 If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of case requires.

17.5 If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.

17.6 If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so

admitted to be due is deposited by the defendant in court.”

9. Prima facie it appears that the communication issued by the Bank of Maharashtra dated 5 April 2007 indicates that the cheques which is the basis of the plaintiff’s claim were submitted to the Bank towards security of loan. Therefore, it is inconceivable that the Bank would accept such cheque without being signed by the defendant. If that be so, the averment made in paragraph 8 of the plaint that the defendant brought the cheque book containing all 20 cheques and signed all the cheques before plaintiff appears to be an issue which requires trial.

10. Considering the claim of the plaintiff that the amount was paid in cash and the acknowledgment of such amount by cheque at this stage does not inspire confidence. In my opinion, the petitioner has made out a case which raises a triable issue covered by clause 17.2 of the judgment of the Apex Court in **IDBI Trusteeship Services Ltd.** (supra).

11. Therefore, in my opinion, the Trial Court ought to have granted unconditional leave to the petitioner to defend. Hence, following order:

a) The petitioner is granted permission to file written statement without depositing amount.

12. The writ petition stands disposed of in above terms.

13. It is made clear that the observations made in the present order shall not influence rights of the parties either in criminal proceedings pending between the parties or the Trial Court while

deciding the suit on merits.

(AMIT BORKAR, J.)