

Nikita

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

WRIT PETITION NO.11777 OF 2023

Atre Rajesh Anant

... Petitioner

V/s.

KamlaBuildwell LLP Thr. Its Designated
Partner Naresh S. Thakur

... Respondent

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Mr. Hitesh P. Vyas a/w Mr. Chandrashekhar V. Yadav for
the Petitioner.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 3, 2023

P.C.:

- 1.** The petitioner-defendant in summary suit is challenging order of Trial Court granting conditional leave on deposit of Rs.1,65,16,500/- within 45 days from the date of order.
- 2.** The respondent/original plaintiff had filed summary suit under Order 37 of the Civil Procedure Code, 1908, seeking recovery of amount of Rs.4,50,25,000/- along with interest 18% per annum from 15th July 2018 till the realization thereon. According to the plaintiff, the plaintiff firm paid various amounts to the defendant till 31st March 2016. The total amount towards principal was Rs.3,10,33,400/- and interest at Rs.1,47,00,000/-. Acknowledging the said liability, a tripartite agreement dated 17th October 2018 termed as memorandum of understanding was executed between the plaintiff, defendant and other four persons.

Wherein, the defendant agreed to repay Rs.4.5 crores by two post dated cheques. First cheque was of Rs.2,00,00,000/- and second cheque was of Rs.2,50,00,000/- dated 10th January 2019 and 15th January 2019. On deposit of cheques they were dishonoured. Hence, after issuing notice of demand, the plaintiff filed Special Summary Suit No.47 of 2019.

3. The petitioner filed application for leave to defend. In paragraph No.9 of application for leave to defend, the petitioner stated that he replied demand notice of plaintiff by admitting liability of Rs.1,65,16,500/- as per ledger amount conferred by registered partnership plaintiff firm. In paragraph No.13 the petitioner specifically admitted his liability of Rs.1,65,16,500/-. He denied liability of Rs.4,50,25,000/-.

4. The Trial Court therefore directed the petitioner to deposit Rs.1,65,16,500/- as condition for filing of written statement.

5. According to the petitioner, the cheques in question are issued for transaction which is not part of memorandum of understanding executed between the parties. Therefore, according to him, the suit having been based on memorandum of understanding, the admission of amount is towards different transaction which is not part of said transaction.

6. I have considered the submission on behalf of the petitioner, however, in view of the averments as under in paragraph No.9 and 13, it is clear that defendant has admitted his liability of Rs.1,65,16,500/-. The relevant text of paragraph No.9 and 13, in application for leave to defend are as under:

“9. The Defendant states that on 12.2.2019, he replied to the above-mentioned notice through Advocate Prasad V. Kulkarni. In the said notice reply the Defendant in para 6 clearly states the amount owned by him to the Plaintiff is Rs.1,65,16,500/- as per the ledger account confirmed by the designated partner of the Plaintiff firm i/e. Mr. Naresh Shamlal Thakur and in the same notice reply the Defendant also made clear that Mr. Naresh Shamlal Thakur is liable to pay Rs.34,25,000/- to the Defendant and Mr. Rohit Naresh Thakur is liable to pay Rs. 12,80,000/- to the Defendant.....

13. The Defendant admits his liability of Rs.1,65,16,500/- towards the Plaintiff but he completely denies the liability of Rs.4,50,25,000/- as claimed by the Plaintiff as the said liability is based on the document i/e. The Memorandum of Understanding dated 17.10.2018.....”

7. Since the petitioner has admitted his liability to the extent of Rs.1,65,16,500/-. No fault can be found with the exercise of power of trial Court while granting conditional leave to defend subject to deposit of Rs.1,65,16,500/-.

8. Hence there is no merit in the petition.

9. The writ petition stands dismissed.

(AMIT BORKAR, J.)