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

WRIT PETITION NO.3177 OF 2022

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Digambar Motiram Jadhav & Anr.

... Petitioners

V/s.

Dr. Jayant Tryambak Pawar

... Respondent

Mr. Anilkumar K. Patil for the petitioners.

Mr. Sanjiv Gorwadkar, Senior Advocate with Mr.
Mahendra N. Sandhyanshiv, Mr. Ankur Pahade and Mr.
Parekshit Pawar for the respondent.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 4, 2023

RC.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioners/original plaintiffs are challenging order dated 25 November 2021 passed by the Civil Judge Senior Division, Malegaon in Special Civil Suit No.115 of 2021 granting unconditional leave to defend.

2. The petitioners/original plaintiffs filed a summary suit based on alleged acknowledgment issued by the defendant accepting amount of Rs.4,25,00,000/-. According to the plaintiffs, defendant's father approached plaintiffs to sell them land and in furtherance of said deal plaintiffs paid total consideration of Rs.1,57,00,000/- out of total consideration of Rs.2,11,00,000/-.

According to the plaintiffs, the defendant showed inability to complete the transaction and assured plaintiffs that they shall repay entire amount of consideration together with damages, totaling to Rs.4,25,00,000/-. The plaintiffs claim is based on two acknowledgments dated 5 March 2015 and 18 May 2017.

3. The respondent/defendant raised a defense that the acknowledgment filed in support of plaintiffs' claim are forged and fabricated. Notice dated 25 September 2019 issued by the plaintiffs through advocate did not contain averment to acknowledgments referred in the suit. Moreover, after knowledge of acknowledgment, the defendant has filed criminal complaint against plaintiffs for offense of forgery.

4. The Trial Court after referring to the judgment in the case of **IDBI Trusteeship Services Ltd. v. Hubtown Ltd.** reported in (2017) 1 SCC 568 granted unconditional leave based on two factors: (i) the witness of acknowledgment dated 18 May 2017 has filed contradictory affidavits which raises triable issue; and (ii) documents regarding original transaction between father of the defendant and plaintiffs are not produced.

5. Learned advocate for the petitioners submitted that the impugned order is not in accordance with paragraph 17 of the judgment in **IDBI Trusteeship** (supra). He submitted that even if defendant raises a triable issue, unconditional leave could not have been granted and the defendant was required to deposit entire or part of the amount of the claim. According to him, the defendant's defense is not covered by clauses 17.1 and 17.2.

6. On perusal of the record, it prima facie appears that the plaintiffs averred payment of Rs.1,57,00,000/- to the defendant. Though the document of 5 March 2015 indicates transaction of agreement to sale, no document of payment of Rs.1,57,00,000/- on the date of payment is produced on record. The first document produced on record which, according to the plaintiffs, evidence payment of Rs.1,57,00,000/- is document dated 5 March 2015. It is inconceivable that such huge amount of Rs.1,57,00,000/- is paid and no contemporaneous document is prepared by the parties. The first document is created after two years of payment. Moreover, in the notice issued by the plaintiffs, it does not mention the documents of acknowledgment which is the basis of summary suit. Apart from the said fact, the reasoning in paragraph 17 of the order that the witness to one of the acknowledgment dated 18 May 2017 has filed contradictory affidavits which creates doubt about authenticity of such document. Therefore, in my opinion, the defendant has made out a case as covered by clause 17.2 of the judgment in **IDBI Trusteeship** (supra). Hence, the impugned order does not call for interference at the hands of this Court.

7. However, in the facts of the case the Trial Court is directed to decide the suit as expeditiously as possible, and preferably within one year from the date of this order.

8. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)