

VRJ

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

WRIT PETITION NO.4928 OF 2023

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Rajendra Manmohan Bartake

... Petitioner

V/s.

Dilip Purshottam Thakkar

... Respondent

**WITH
INTERIM APPLICATION NO.16529 OF 2023
IN
WRIT PETITION NO.4928 OF 2023**

Rajendra Manmohan Bartake

... Applicant

V/s.

Dilip Purshottam Thakkar

... Respondent

Mr. Suhas S. Railkar for the petitioner/applicant.

Mr. Deepak Pandey for the respondent.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 25, 2023

P.C.:

1. The petitioner is original defendant in Special Summary Suit No.144 of 2014 filed by respondent seeking decree of suit claim of Rs.13,43,000/- together with future interest at 12% per annum. According to the plaintiff, the defendant had executed a promissory note for amount of Rs.9,00,000/-, moreover, had issued cheques for this same amount dated 31st May 2010.

2. The Trial Court, by order dated 29th June 2018, granted petitioner leave to defend subject to condition that the petitioner shall deposit claim amount of Rs.13,43,000/- within fifteen days from the date of order. The petitioner did not comply with the said order. He filed application for review of the order along with application under section 340 read with section 195 of the Civil Procedure Code, 1908.

3. The Trial Court rejected the application.

4. On 2nd January 2020, the petitioner sought an adjournment before the Trial Court on the ground that he is challenging the order of grant of conditional leave. However, he did not produce any document before the Trial Court.

5. In the meantime, the respondent filed his affidavit-in-evidence stating the particulars of the claim. The plaintiff proved issuance of cheque dated 30th November 2010 for Rs.9,00,000/-. No material was brought on record by the petitioner to indicate that the plaintiff failed to prove his case based on cheque and promissory note. The Trial Court, therefore, granted decree in terms of suit claim, however, reduced future interest from 12% to 8% per annum.

6. Considering non-compliance with order dated 29th June 2018 coupled with the fact that the plaintiff proved his case by adducing his evidence on record which remains unchallenged. Therefore, in my opinion, there is no error of jurisdiction committed by the Trial Court calling for interference in the petition.

7. The writ petition is, therefore, dismissed. No costs.
8. In view of dismissal of the writ petition, the interim application does not survive and the same stands disposed of as infructuous.

(AMIT BORKAR, J.)