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

WRIT PETITION NO.2765 OF 2020

Sanjay Damu Batav

... Petitioner

V/s.

Vinayak D. Joshi

... Respondent

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Mr. Girish R. Agrawal, for petitioner.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 11, 2023

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner is original plaintiff in a summary suit is challenging order passed by the Trial Court granting unconditional leave to defend.
2. The order dated 5 August 2019 granting unconditional leave is challenged by the petitioner by the present writ petition.
3. This Court on 13 July 2022 issued notice for final disposal. Office remark dated 5 July 2023 indicates that the respondent is served through Court Bailiff.
4. In addition to the Court's notice, the petitioner has served respondent privately and has filed affidavit of service. Despite service none appears for the respondent either personally or through his Advocate.

5. Plaintiff filed suit for recovery of R.1,17,25,667/- along with interest based on promissory note dated 12 May 2017. According to him, on the same day, the defendant executed indemnity bond in presence of witness. Despite issuance of promissory note, the defendant failed to pay the amount; hence, the plaintiff issued demand notice. Despite receipt of demand notice, defendant failed to pay the amount. Hence, the petitioner filed Summary Suit No.189 of 2017.

6. In reply to Summons For Judgment, the defendant contended that the plaintiff has prepared false and fabricated documents and his signature was obtained fraudulently.

7. In clause (V) of the application seeking leave to defend, the defendant states that the promissory note dated 12 May 2017 was not executed by him with its true intent, meaning and by going through or understanding the contents of document. The later portion of the said paragraph indicates that the defendant accepts signature on the promissory note. The defendant in paragraph (V) has admitted signature by making averments as under:

“.....The mode and the manner in which the said promissory note has been prepared and got signed from this defendant is not proper and legal and the same is not enforceable in the eyes of law and not binding upon the defendant....”

8. The Trial Court in paragraph 4 of the order holds that the defendant denied legality of the promissory note and also challenged mode of its execution. However, he admitted his

transaction with the plaintiff, relying on the judgment in the case of **Mechalec Engineers and Manufacturers Versus Basic Equipment Corporation**, reported in AIR 1977 SC 577, the Trial Court granted unconditional leave to defend.

9. After amendment of 1976, the Apex Court in the case of **IDBI Trusteeship Services Limited Versus Hubtown Limited**, (2017) 1 SCC 568, has held that the judgment in the case of **Mechalec Engineers and Manufacturers** (Supra) is superseded and the decision in the case of **Milkhiram (India) Private Limited Versus Chamanlal Bros.**, reported in AIR 1965 SC 1698 is binding decision.

10. The Apex Court in the case of **IDBI Trusteeship Services Limited** (Supra) in paragraph 17 has held as under:

“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 the 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.”

11. The defendant has admitted signature on the promissory note. However, raised the defence that the contents of the document were not understood by the defendant, hence essential ingredients of Order 37, Rule 3 to file summary suit stands satisfied. Since the signature on the promissory note is admitted, the case is covered by clause 17.4 of the judgment. Therefore, it is necessary that the defendant be directed to deposit the amount of suit claim and on deposit of suit claim he shall be entitled to file a written statement. Hence, following order:

a) The impugned order dated 5 August 2019 passed by the 3rd Joint Civil Judge, Senior Division, Thane in Summary Suit No.189 of 2017 stands modified.

b) The defendant is granted leave to defend on his depositing entire suit claim within two months from today. On depositing of such amount, the defendant shall be entitled to file a written statement.

12. With this modification, the writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)