

AGK

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

WRIT PETITION NO.15417 OF 2023

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Vahida Aslam Mujawar

... Petitioner

V/s.

Lukman Rafik Fakir

... Respondent

Mr. Surel S. Shah i/by Mr. Manoj A. Patil for the
petitioner.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 12, 2023

PC.:

1. The petitioner is defendant in Summary Suit No.151 of 2021. The Trial Court by the impugned order rejected application for grant of leave to defend filed by the petitioner. Said order is the subject matter of challenge in the present writ petition.

2. The respondent filed Summary Suit No.151 of 2021 for recovery of Rs.9,50,000/- along with interest at the rate of 18% from 27 November 2019. The summary suit is based on *two* cheques allegedly issued by the petitioner. Total amount mentioned in the cheque comes to Rs.9,50,000/-. According to the plaintiff, defendant executed a stamp paper on 2 October 2018 which is in the nature of receipt of amount. Despite deposit of both cheques, the plaintiff could not recover the amount. Hence, after issuance of notice, he filed summary suit.

3. The petitioner filed application for leave to defend. He denied receipt of amount of Rs.9,50,000/-. The petitioner disputed execution of stamp as alleged by the plaintiff. According to the defendant, he has filed criminal complaint against the plaintiff under Sections 420 and 465 of the Indian Penal Code, 1860 and under the provisions of the Prevention of Money Laundering Act, 2002.

4. The Trial Court based on two cheques dated 1 November 2019 and 2 November 2019 recorded a finding that the plaintiff paid Rs.9,50,000/- to the defendant. The suit is based on cheques. Based on documents produced on record such as cheques, hand loan receipts, letter of Aman Bank for encashment of Rs.3 lakh and entry of withdrawal of Rs.5,50,000/- recorded a finding that the defendant is not entitled to the leave to defend.

5. Considering the defense raised by the defendant that he has not received the amount and he disputed receipt of cheque, the Trial Court ought to have granted leave to defend subject to deposit of Rs.9,50,000/-. Hence, following order:

- a) The order of the Trial Court dated 29 November 2023 rejecting application for leave to defend is modified to the extent, subject to deposit of Rs.9,50,000/- within six weeks from today;
- b) The petitioner shall file undertaking before this Court within two weeks from today stating that he will deposit Rs.9,50,000/- within six weeks from today;
- c) On deposit of such amount, the petitioner shall be

entitled to file written statement;

d) For a period of six weeks from today, the Trial Court shall not proceed to deliver judgment in Summary Suit No.151 of 2021;

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

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 15 December 2023. Corrections in paragraph 3 & 5(a) are shown in italicize.