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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL APPEAL NO.69 OF 2023
IN
SUMMARY SUIT NO.754 OF 2015**

Kishor Bhabutmalji Shah

: Appellant
(Org. Defendant No.3)

Vs.

Dr. Jagannath Ganesh Hegde
& Ors.

: Respondents
(Org. Defendant No.1 & 2)

**WITH
INTERIM APPLICATION NO.1778 OF 2023
IN
COMMERCIAL APPEAL NO.69 OF 2023**

Mr. P.D. Prasad Rao i/by Ms. Devika Purav for Appellant.
Mr. Ajay Panicker i/by Ajay Law Associates a/w Ms. Sherebanu
Jasdanwala for Respondent No.1.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : 4th September, 2023

P.C. :

The present Appeal is filed against an Order dated 24th January, 2017 by which the captioned Summary Suit was decreed *inter alia* against the Appellant (who was Defendant No.3) in the said Summary Suit.

2. By an Order dated 1st August, 2016 passed in

Summons for Judgment No.88 of 2015 this Court had granted conditional leave to defend the captioned Summary Suit to the Appellant and Respondent No.3 (being Defendant No.2 in the Suit), on the condition that they would deposit a sum of Rs.1,00,000,00/- with the Prothonotary and Senior Master, High Court, Bombay. An Appeal from the order granting conditional leave was also dismissed by this Court vide Order dated 24th November, 2016. Since the Appellant did not make the deposit as directed a non-deposit certificate dated 20th January, 2017 was issued by Prothonotary and Senior Master, High Court, Bombay, basis which, this Suit was decreed by Impugned Order *inter alia* against the Appellant.

3. Mr. Rao learned counsel appearing on behalf of the Appellant submitted that the Appellant had an extremely good case on merits, but were prevented from putting forth the same since the Appellant was not in a position to the comply with the order of deposit. He invited our attention to the Memorandum of Settlement relied upon by the Plaintiff in the Suit and pointed out that the signature of the Appellant was forged thereon. Learned counsel also pointed out from the Memorandum of Settlement that the liability of the Appellant

was conjoined with one Rajesh Ranjan (who was described the party of Forth part) in the said Memorandum of Settlement. He pointed out from the said Memorandum of Settlement that the said Rajesh Ranjan had neither signed the Memorandum of Settlement nor did the Memorandum of Settlement contained any details as to the address etc., of the said Rajesh Ranjan. Basis this he submitted that there was no liability infact upon the Appellant.

4. Learned counsel then submitted that the Appellant had not issued any of the promissory note and/or cheques, which were appended to the Plaint and therefore, admittedly there was no principal liability of the Appellant for repayment of the monies which were advanced to the Respondent No.2 in the Suit. Basis this he submitted that the Appellant had an extremely good case on merits and thus ought to have been granted an opportunity to defend the Suit.

5. *Per contra* Mr. Panicker, learned counsel appearing on behalf of the Respondent No.1 submitted that the Impugned Order had been correctly passed. He pointed out that the Appellant has not complied with the Order of conditional leave and thus a decree must necessary follow. He

disputed the contentions of the Appellant that the MOU was not properly executed and therefore submitted that the Appeal ought to be dismissed.

6. We have heard learned counsel. Perused a copy of the paper and proceedings. We *prima facie* find that the learned counsel for the Appellant is correct in his submissions that the MOU does not bear the signature of the Rajesh Ranjan. We also find *ex-facie* that none of the promissory note appended to the said Plaint were issued by the Appellant. The Appellant's name only appeared as the witness thereto.

7. Given these facts, we deem it fit and in the interest of justice that the Appellant be granted an opportunity to defend the Suit on merits. However, the same cannot be unconditional. We therefore pass the following Order.

:Order:

- (i) The Appellant shall be permitted to defend the Suit on making a deposit of Rs.40,00,000/- with the Prothonotary and Senior Master, High Court, Bombay.
- (ii) The first installment of Rs.25,00,000/- to be

deposited within a period of two weeks from today.

(iii) The balance of Rs.15,00,000/- to be deposited on or before 4th October, 2023 on making of the said deposit.

(iv) The Decree to be set aside.

(v) The Appellant to file his written submission within a period of four weeks from the date of the deposit.

8. The Learned Judge to dispose of the said Suit as expeditiously as possible. We make it clear that the pending and hearing of the final disposal of the Suit, the interim reliefs restraining Appellant from dealing with the properties namely the flat as also the office premises shall remain in full force and operation. We however make it clear that the Decree shall be set aside only insofar as the same pertains to the Appellant.

9. With these directions the Appeal is disposed of.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)