



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.819 OF 2019

Bimalkumar Awadheshprasad Singh -Vs-Housing Development Finance Corporation

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.S.G.Shukla counsel for the Petitioner.
Mr. S.N.Gawande, counsel for respondent.

CORAM : VRUSHALI V.JOSHI, J.

Closed for orders on: 19.10.2023

Order Pronounced on:20.10.2023

1. The petitioner has challenged the order passed by the Trial Court imposing the condition to deposit 50% amount while granting leave to defend the application.
2. On 03.09.2013, the respondent/plaintiff has filed summary suit bearing No.105 of 2013 under Order XXXVII Rule 2 of the Code of Civil Procedure against this petitioner/defendant for recovery of amount of Rs.7,45,571/- before the 9th Jt. Civil Judge Senior Division, Nagpur.
3. The claim of respondent in suit is that the petitioner has secured loan of Rs.5,50,000/- from the respondent Bank and the petitioner had executed loan agreement and hence taken a promissory note in favour of the respondent. Said amount was secured in respect of flat No.303 situated on 3rd Floor in building known as Mansi Apartment. As the petitioner failed to make payment of pre-equated monthly installment, the respondent was constrained to sell said flat No.303 and

thereafter for recovery of balance amount, filed Summary Suit bearing No.105 of 2013 stating that Rs.7,45,571/- is recoverable from the petition. That after receiving suit summons for appearance, the petitioner appeared in the case before the learned Trial Court by filing his appearance in the case. After summons for judgment under Order XXXVII Rule 3(4) of the Code of Civil Procedure as per form 4-A for judgment has been received by the present petitioner on 10.07.2016 for appearance in Court on dated 22.07.2016. On 22.07.2016 he has filed application seeking time to file application for grant of leave to defend the case.

4. On 19.08.2016, the petitioner had moved an application for grant of leave to defend the case along with written statement and counter claim. The Civil Judge Junior Division has passed the order on 10.10.2017 rejecting the said application dated 19.08.2016, for grant of leave to defend the case stating therein that the petitioner has not moved application for grant of leave to defend the case within limitation and petitioner has not filed any application for condonation of delay in the matter. However, the petitioner preferred the Writ Petition No.7872 of 2017 against the said order. This Court has allowed the writ petition and remanded the matter to the trial court.

5. The petitioner has filed an application for condonation of delay in the matter which was allowed by the Trial Court after hearing the parties. The trial Court has passed the order dated 02.01.2019 granting

conditional leave to defend to the petitioner directing him to deposit 50% of the amount claimed i.e. Rs.3,72,785/-. Granting conditional leave to defend on depositing 50% of claimed amount is totally illegal. Hence the same is challenged before this Court.

6. The counsel for the petitioner has stated that this Court has passed the order on similar issue in **Writ Petition No.7143 of 2018 (Sanjivkumar Singh Vs. Housing Development Finance Corporation Limited)** on **7.03.2019**. This Court has taken a view that -

“Both the learned Counsel for the parties have argued on various aspects of the facts of the present case and they also sought to rely upon various judgments to support their respective stands. This Court is of the opinion that the present petition can be disposed of on a very short ground. A perusal of the written submissions filed on behalf of the respondent before this Court shows that since the loan account of the petitioner had become N.P.A., the respondent had initiated action under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and that the flat in question was auctioned on 19-12-2012, from which the respondent had recovered amount of Rs.4,32,000/-. In view of the fact that the aforesaid amount was recovered by the respondent even before filing of the said summary suit for recovery bearing No.107 of 2013, it becomes evident that the aforesaid fact has a direct bearing on the condition that could be imposed upon the petitioner while allowing the application for grant of leave to defend. This aspect has not been adverted to by the trial Court at all.”

7. Since, similar issue has already been decided by this Court in **Writ Petition No. 7143 of 2018** (supra) same

order can be passed in the present Writ Petition.

8. Hence, the impugned order dated 02.01.2019 imposing the condition of depositing the 50% amount is modified. The application for leave to defend filed by the petitioner is allowed subject to the petitioner depositing an amount of Rs.1,00,000/- within a period of eight weeks from today.

9. In the facts and circumstances of the present case, the trial Court will make an endeavour to dispose of the suit as expeditiously as possible.

JUDGE