



**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 861 OF 2024

Rajaram s/o. Baburao Chaure,
Age 41 yrs., Occu. Business,
R/o. Flat No. 304, Bride Arcade, Phase-I,
behind SBH Colony, Keshav Nagar,
Latur, Tq. & Dist. Latur.

....Petitioner

Versus

Hariram s/o. Baburao Ukarle,
Age 40 yrs, Occu. Business,
R/o. Flat No. 104, Bridb Arcade,
Phase-II, Behind SBH Colony,
Keshav Nagar, Latur,
Tq. & Dist. Latur.

....Respondent

...
Mr. P.P. More, Advocate for the petitioner.
Mr. V. Valse h/f. Mr. T.M. Venjane, Advocate for respondent.
...

CORAM : ARUN R. PEDNEKER, J.
DATE : 06/02/2024.

ORDER :

1. By way of present writ petition, the petitioner is challenging the order dated 23.11.2023 passed by the learned District Judge, Latur on application below Exh. 20 in Summary Civil Suit No. 4/2022, by which the defendant/petitioner herein is granted leave to defend the suit, subject to deposit of Rs. 5,00,000/ (Rs. Five lakh) within two months from the date of order.

2. Briefly, the facts of the case are as under :-

Plaintiff/respondent herein filed a suit for recovery of cheque amount of Rs.9,93,700/- along with interest amount of Rs.5,21,692/- and as such, plaintiff has claimed total amount of Rs.15,15,392/- from the defendant. It is the case of the plaintiff that on 16.3.2017 contract was executed between

the plaintiff and the defendant, one Rajkumar Pandit executed development agreement with the landlord Rupla Gopa Chavan and as per the contract, the land of Rupla Chavan was developed and all the plots were sold to different persons. All the accounts and profit was in the custody of the defendant and after settling the account, the outstanding amount of Rs.9,93,700/- was with the defendant. The defendant agreed to pay said amount and issued cheque for Rs.9,93,700/-. However, the said cheque was dishonoured for insufficient funds in the account of defendant and thus, the plaintiff filed the suit.

3. The defendant has filed application below Exh. 20, seeking unconditional permission to leave to defend the suit. Defence was raised that suit is time barred. Defendant agreed that agreement dated 16.3.2017 was executed, however, the said agreement was cancelled and therefore, there is no question of sale of plots and sharing of profit and therefore, defendant is not liable to pay the amount of Rs. 9,93,700/- to the plaintiff. It is the case of the defendant that before starting of work, three signed cheques were taken from the defendant by the plaintiff and the cheque in question was not issued towards the lawful enforceable liability.

4. The contention of the defendant was refuted by the plaintiff by filing his say at Exh. 25. The case of the plaintiff was also supported by Dhondiram Chavan, son of the landlord and he has stated in his affidavit that plaintiff, defendant and one Rajkumar Pandit have sold the plots as per the agreement dated 16.3.2017. Another witness Mohan Chavan has also supported the case of the plaintiff. One purchaser namely Archana Male has also filed an affidavit that she has purchased the plot from original landlord, plaintiff, defendant and Rajkumar Pandit and the sale deed executed in

favour of the said witness is also produced on record. Thus, the plaintiff has contended that the story of the defendant that agreement was cancelled is false and the defendant has no legal defence and prayed for rejection of application for leave to defend filed by the defendant.

5. After considering the evidence, the Trial Court granted leave to defend the suit to the defendant, subject to deposit of Rs.5,00,000/- as against the due amount of Rs. 15,15,392. In the instant case, it appears that the defendant has set up the defence which is illusory, sham and practically moonshine. It does not appear that defendant has good defence. Moreso, he has issued a cheque, which prima facie appears to be towards his liability. As such, the Trial Court has rightly put the petitioner herein on terms by directing him to deposit amount of Rs.5,00,000/-. As such, the order of the Trial Court directing the petitioner to deposit Rs.5,00,000/- cannot be faulted. However, the time to deposit is extended by two months from today. The defendant shall file his written statement within one month.

[ARUN R. PEDNEKER J.]

SSC/