

Ajay

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

WRIT PETITION NO. 3636 OF 2024

Arun Dashrath Khairnar

Petitioner

.. (Orig. Plaintiff)

Versus

Ajay Shantilal Raka and Ors.

Respondents

.. (Orig. Defendants)

-
- Mr. Jayendra D. Khairnar, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 12, 2024.

P.C.:

- 1.** Heard Mr. Khairnar, learned Advocate for Petitioner.
- 2.** Writ Petition takes exception to the impugned order dated 01.01.2024 passed in Application below Exhibit “25” in Summary Suit No.11 of 2023 which is at Exhibit “I” - page No.78 of the Writ Petition.
- 3.** Application before Trial Court is filed by the Defendants seeking conditional leave to defend. Defendants are the legal heirs of Shantilal Raka. Suit is filed for recovery of an amount of Rs.30,00,000/- received by the father of Respondent Nos.1 to 3 and husband of Respondent No.2 in cash. According to Plaintiff two cheques of Rs.30,00,000/- were issued by the deceased Shantilal Manaklal Raka. It is contended by legal heirs of Shantilal Raka that the said cheques were not signed by the deceased Shantilal.

Proceedings under Section 138 of the Negotiable Instrument Act, 1881 were adopted, but the same could not be culminated since Shantilal Raka expired in the interregnum. In that view of the matter, legal heirs of deceased Shantilal Raka were brought on record.

4. Learned Trial Court after examining all probabilities and pleadings passed the order dated 01.01.2024 delineating the facts and observing that the only defence available to the Defendants is that in reply to the first notice issued prior to the filing of the Suit. Shantilal Raka had infact replied to the said notice by Reply dated 25.05.2020 which is at page No.22 of the Writ Petition and categorically denied having issued the two cheques.

5. I have impressed upon Mr. Khairnar that in view of the aforementioned circumstances, no fault can be found with the impugned order. In that view of the matter, leave to defend to the legal heirs of deceased Shantilal Raka has therefore been granted appropriately.

6. In view of the above, the impugned order dated 01.01.2024 stands sustained.

7. At the request of Mr. Khairnar, Special Civil Suit No.11 of 2023 stands expedited and the learned Trial Court is requested by this Court to dispose of the pending Suit as expeditiously as possible and in any event preferably within a period of one year from today.

- 8.** It is clarified that the learned Trial Court shall not grant any unnecessary adjournments to the parties unless it is utmost necessary due to any emergency / exigency.
- 9.** Parties are directed to cooperate with the Trial Court for expeditious disposal of the Suit proceedings.
- 10.** All contentions of the parties are expressly kept open before the learned Trial Court.
- 11.** With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

Ajay

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