

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5116 OF 2024

Mihir Kauntey Tanna

.. Petitioner

Versus

Indira Jitendra Shah

.. Respondent

.....

- Mr. Malhar Zakaria a/w Mr. Dhruv Jain i/by Rajendra Rathod for Petitioner
- Mr. Yatin Shah for Respondent

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 19, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 19.04.2024.
3. Heard Mr. Zakaria, learned Advocate for Petitioner and Mr. Shah, learned Advocate for Respondent.
4. Present Writ Petition takes exception to the order dated 06.10.2023 passed by the Bombay City Civil Court in Summons for Judgment No. 76 of 2023 in Summary Suit No. 284 of 2022. By virtue of the impugned order. leave to defend is granted to Petitioner (Org. Defendant) on deposit of Rs. 10,79,702/- in the Court.
5. Mr. Zakaria would submit that the transaction and relationship between the parties was on the basis of a friendly loan of Rs. 6 Lacs which according to Defendant has been fully paid back, but the

dispute is on the issue of interest. To counter this submission of Defendant, Mr. Shah would submit that a document in the nature of a promissory note has been executed by the Defendant which *prima facie* would show the total amount receivable from the Defendant is Rs.10,79,702/-. Hence he would refute the Defendant's contentions.

6. After hearing learned Advocates for the respective parties, at the outset, I have shown my disinclination to interfere with the impugned order, but at the request made by Mr. Zakaria, this Court is pleased to reduce the amount of deposit so that there can be a finality if the trial is concluded. The learned Advocate for Defendant has taken appropriate instructions and agreed to some reduction and hence the following order is passed by consent of the Defendant:-

- (i) The amount of Rs. 10,79,702/- as stated in the impugned order shall be substituted by the amount of Rs. 7,00,000/-;
- (ii) Rest of the order dated 06.10.2023 shall remain the same, however there is an addition, that is the aforesaid amount of Rs. 7,00,000/- shall be deposited by the Petitioner / Defendant within a period of two months from today positively in two tranches i.e. first tranche of Rs. 3.5 Lacs within a period of 30 days from today and

the second tranche of Rs. 3.5 Lacs on expiry of 60 days from today with the learned Trial Court;

- (iii) In the meanwhile, learned Trial Court is directed by this Court to proceed with the Suit proceedings;
- (iv) It is clarified that if there is any default on the part of Defendant to deposit the first tranche of Rs. 3.5 Lacs or the second tranche as directed by this Court, the Suit proceedings shall be halted and Defendant agrees to suffer a decree of Rs. 10,79,200/- along with future interest and this shall be the default condition which the Defendant undertakes to abide. Defendant shall file an undertaking on affidavit within a period of one week from today so as to abide by this condition and only on the Defendant's undertaking having been filed in this Court, Defendant shall be entitled to deposit the amount of Rs. 7,00,000/- as directed by this Court in the Trial Court and the Suit shall proceed.

7. In view of the aforesaid condition, learned Trial Court is directed to determine Summary Suit No. 284 of 2022 as expeditiously as possible and in any event within a period of six months from today strictly in accordance with law. Parties shall co-operate with the Trial

Court and shall not seek adjournments unless absolutely necessary due to any emergency or exigency.

8. Needless to state that all contentions of the parties are expressly kept open and the Trial Court shall not be influenced by any of the observations and findings in the impugned order which are *prima facie* in nature and determine the Suit strictly in accordance with law on the evidence led by the respective parties.

9. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
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2024.04.20
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