

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14556 OF 2023

Anand Sarnaik & Anr.

.. Petitioners

Versus

Dilipkumar Atmaram Nagpal & Anr.

.. Respondents

.....

- Mr. Ganesh Ambekar a/w Mr. Jash Gandhi i/by Dua Associates for Petitioners
- Ms. Rekha Shukla for Respondents

.....

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 15, 2024

P. C.:

1. Heard Mr. Ambekar, learned Advocate for Petitioners and Ms. Shukla, learned Advocate for Respondents.

2. Present Writ Petition takes exception to the order dated 15.02.2023 passed by the learned City Civil Court in Summons for Judgment No. 333 of 2016 in Summary Suit No. 953 of 2015. By the impugned order, Summons for Judgment has been adjudicated and decided by a cogent and reasoned order granting conditional leave to Defendant Nos. 2 and 3 subject to the said Defendants depositing an amount of Rs. 56 Lacs within a period of eight weeks from the date of the said order i.e. 15.02.2023. Present Writ Petition is filed on 24.03.2023.

3. Today the matter is argued before me on account of praecipe moved on 01.03.2024 by Petitioners / Org. Defendant Nos. 2 and 3.

Necessity of noting this has arisen only because the learned Trial Court has in view of non-compliance of the impugned order has kept the matter for passing of ex parte judgment.

4. Today when the matter was called, after hearing the learned Advocates for the parties and more specifically learned Advocate for the Petitioners / Defendant Nos. 2 and 3 and after going through the facts of the present case, I called upon the Petitioners to show their bonafides and agree to deposit at least Rs. 40 Lakhs in installments. Learned Advocate was asked to take appropriate instructions and the matter was kept back in the afternoon session. I am informed that an appropriate order be passed as Petitioners are not in a position to deposit any amount. This is more specifically in view of the fact that the loan advanced by Respondent No. 1 / Plaintiff was by way of two cheques i.e. cheque No. 556023 dated 14.06.2012 for Rs. 46 Lakhs and another Cheque No. 555879 dated 31.10.2011 for Rs. 10 Lakhs. Against which Defendant No. 1 Company (Respondent No. 2 herein) had issued two separate bills of exchange. Original Defendant Nos. 2 and 3 are the shareholders and directors of Defendant No. 1. They are the signatories of the bills of exchange on behalf of Defendant No. 1.

5. Ms. Shukla, learned Advocate for Respondents would draw my attention to two Bills of Exchange which are at Exh. B, page Nos. 30-

31 as also copies of cheques which are appended at page Nos. 32 & 34 of the Writ Petition.

6. Facts of the present case would reveal that Defendants had also returned this amount by way of cheques but the said cheques were dishonoured for insufficient funds. After considering the facts of the matter and more specifically the aforementioned facts which are admitted by the parties, no reason whatsoever for interference is warranted in the impugned order. Learned Trial Court had opined that sufficient material is placed on record to hold that both the bills of exchange were issued by Defendant No. 1 and that they were endorsed by Defendant Nos. 2 and 3. In fact, learned Trial Court proceeded to hold that it would amount to accepting the liability by Defendant Nos. 2 and 3 personally. However, the fact of issuance of the two bills of exchange against receipt of the amount of Rs. 56 Lacs by the Defendants therefore stands clearly proved. Defendants do not have any probable or bonafide defence whatsoever in the present case and in that view of the matter, impugned order dated 15.02.2023 is upheld and confirmed.

7. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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by RAVINDRA
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AMBERKAR
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