

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3146 OF 2024

Anand Sarnaik & Anr.

.. Petitioners

Versus

Monisha A. Thakur & 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 06.03.2023 passed by the learned City Civil Court in Summons for Judgment No. 261 of 2019 in Summary Suit No. 701 of 2014. 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. 10 Lacs within a period of eight weeks from the date of the said order i.e. 06.03.2023. Present Writ Petition is filed on 15.06.2023.

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 Court 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 exparte 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. 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 cheques No. 000024 dated 31.10.2011 for Rs. 10 Lakhs against which Defendant No. 1 Company had issued appropriate bill of exchange. Original Defendant Nos. 2 and 3 are the shareholders and directors of Defendant No. 1. They are the signatories of the bill of exchange on behalf of Defendant No. 1.

5. Ms. Shukla, learned Advocate for Respondents would draw my attention to Bill of Exchange which is at Exh. A, page No. 27 as also copy of cheques which is appended at page No. 28 of the Writ Petition.

6. Facts of the present case would reveal that Defendants had also returned this amount by way of cheque but the said cheque was 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 the bill of exchange was issued by Defendant No. 1 and that they were endorsed by Defendant Nos. 2, 3 and 4. 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 bill of exchange against the receipt of the amount of Rs. 10 Lac 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 06.03.2023 is upheld and confirmed.

7. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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signed by
RAVINDRA
MOHAN
AMBERKAR
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