



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12070 OF 2024

Chandrashekhar Panditrao Kadam,
Age : Major, Occ. : Business,
R/o. Malumbra Post, Tungi (Bk),
Tq. Ausa, Dist. Latur.

...PETITIONER
(Orig. Defendant)

...VERSUS...

Kabirdas s/o Biru Survase,
Age : 66 years, Occ. : Service,
R/o. Mahamadpur,
Tq. & Dist. Latur.

...RESPONDENT
(Orig. Plaintiff)

Adv. S. P. Katneshwarkar, Advocate for the Petitioner
Mr. V. H. Pathade, Advocate for the sole respondent

CORAM : ROHIT W. JOSHI, J.
DATE : JULY 16, 2025

ORAL JUDGMENT :

1. The present respondent has filed a summary suit for recovery of money against the present petitioner under Order 37 of the Code of Civil Procedure. In this suit, the petitioner-defendant has filed an application dated 14.06.2023 vide 'Exhibit 15' seeking leave to defend. Vide order dated 13.03.2024, the learned Trial Court has granted leave to defend, subject to condition that the petitioner-defendant deposits a sum of Rs.1,50,000/- within a period of three (03) months from the date of order. The said order is impugned by the defendant by filing the present petition.

2. It is the case of plaintiff that he has advanced a sum of Rs.4,00,000/- to the defendant as hand loan. As per the plaint averments, a sum of Rs.2,00,000/- is paid on 23.10.2019, Rs.1,00,000/- by NEFT and Rs.1,00,000/- through Rs.1,00,000/- to cheque. Apart from this a sum of Rs.2,00,000/- is alleged to be paid in cash.

3. The defendant on being served with the summons appeared in the matter and filed application seeking leave to defend *inter alia* contending that the son of the plaintiff was engaged in distribution of newspapers and that he had taken his vehicle on rent for the purpose of his business. According to the defendant, agreed rent was Rs.25,000/- per month. It is stated that the work of transportation has commenced from 22.10.2019 and continued till the month of October 2020. The defendant states that sum of Rs.2,00,000/- was received by any NEFT through cheque on 23.10.2019 towards advance rent for period of eight (08) months. As regards cheque issued by the defendant to the plaintiff, explanation offered is that the son of plaintiff had obtained a blank signed cheque from the defendant towards security of advance rent.

4. The learned Trial Court, after hearing the parties has allowed the application thereby granting leave to defend, subject to condition that amount as aforesaid is deposited by the defendant.

5. The learned counsel for the defendant/petitioner makes a submission that having recorded that a triable issue is raised by the defendant, it was not open for the learned trial court to impose any condition while granting leave to defend the suit. The learned advocate places reliance on second proviso to Order XXXVII Rule 5 of Code of Civil Procedure and contends that the conditional leave to defend can be granted only, if the claim is admitted by the defendant. He has placed reliance on judgment of the Hon'ble Apex Court in the matter of ***Mechelec Engineers & Manufacturers Vs. Basic Equipment Corporation***¹ to contend that unconditional leave was required to be granted in the facts of the case.

6. Per contra, the learned advocate for the plaintiff contends that it is not in dispute that the defendant had issued cheque of Rs.4,00,000/- dated 20.07.2022 towards repayment loan amount. The learned advocate contends that issuance of cheque by itself is *prima facie* admission of liability. The contention is that there is a

1 AIR 1977 SC 577
komal kamble

presumption in favour of the plaintiff that the defendant had issued cheque towards discharge of liability. The learned advocate places reliance on judgment dated 22.12.2022, passed by this Court in Writ Petition No. 9339 of 2022 (Aurangabad Bench).

7. Perusal of application will demonstrate that defendant has admitted receipt of Rs.2,00,000/- from plaintiff. The explanation is that the said amount was accepted towards advance rent for a period of 8 months. The defendant alleges that he has executed work of transportation of newspapers for the son of the plaintiff from October 2019 to October 2020, for monthly rent of Rs.25,000/-. Perusal of the application will also demonstrate for issuance of cheque is admitted by the defendant. There are two aspects, which immediately draw attention on reading of the application. First, the transportation work is stated to be executed for a period of twelve (12) months, however, the defendant is absolutely silent as regards the rent for remaining period of 4 months. The second aspect is that the defendant was to execute transportation work for plaintiff's son and therefore, was entitled to receive money under the transportation agreement. The defendant has not explained the reason for which he was required to offer

blank cheque towards security. It is well settled that issuance of a cheque gives rise to presumption of liability. The judgment relied upon by the learned advocate for the respondent/plaintiff takes into consideration the aspect of implied admission by act of issuance of cheque. Having regard to totality of circumstances, in my considered opinion, the case of defendant/petitioner does not fall under Clauses (a) or (b) of paragraph 8 in the judgment relied upon by him. The learned Trial Court has rightly exercised discretion of putting the defendant to terms, while granting leave to defend.

8. The impugned order does not call for any interference. The petition is, therefore, **dismissed**. Time to deposit is extended by a period of 8 weeks from today.

9. Pending civil applications, if any, stand **disposed of**.

[ROHIT W. JOSHI, J.]