

VRJ

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

WRIT PETITION NO.5969 OF 2019

VAIBHAV
RAMESH
JADHAV

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Kolhapur Cancer Center Pvt. Ltd.,
Kolhapur Through Its Managing
Director, Dr. Suraj Bhaskar Pawar ... Petitioner
V/s.
Bhagwat Chandrakant Nalawade ... Respondent

Mr. Shashank C. Mangle (through V.C.) with Shravan
H. Sul for the petitioner (through V.C.).

Mr. Jolly Bhutelo with Vaibhav Patil for the respondent.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : DECEMBER 10, 2025

P.C.:

1. Heard learned advocates appearing for respective parties.
2. Present writ petition takes exception to order dated 16th August 2018 passed by learned Civil Judge, Senior Division, Kolhapur, in Summary Suit No. 3 of 2018, whereby leave to defend has been granted in favour of respondent without imposing specific condition.
3. The petitioner is plaintiff in Summary Suit No.3 of 2018. The suit has been instituted under provisions of Order XXXVII of Civil

Procedure Code, 1908 for recovery of amount of Rs.1,18,00,000/-. The plaintiff's claim is based on two cheques and Acknowledgement-cum-Affidavit. Respondent appeared in the suit and filed an application seeking leave to defend under Order XXXVII Rule 3(a) of Civil Procedure Code, 1908. Trial Court passed impugned order on the aforesaid application. While allowing application, points for consideration were framed. Point No.2, states as to whether defendant is entitled for unconditional leave to defend. It has been answered in negative. Even in paragraph No.10 of impugned order, Trial Court observed that defendant is not entitled for unconditional leave to defend as he merely denied execution of Acknowledgement-cum-Affidavit and did not given any explanation as to why cheques have been given by him. The operative part of order depicts that application is partly allowed and defendant is granted leave to defend subject to condition that defendant shall not ask for adjournment on any count except extreme circumstances.

4. Apparently, when Trial Court came to conclusion that unconditional leave to defend cannot be granted, precondition in the nature of deposit of part of claim amount or furnishing of

security ought to have been imposed for grant of leave. The condition that defendant should not seek adjournment cannot be countenanced as a condition expected for leave to defend under Order XXXVII Rule 3(a) Civil Procedure Code, 1908.

5. In that view of the matter, writ petition is partly allowed.
6. Impugned order dated 16th August 2018 passed by learned Civil Judge, Senior Division, Kolhapur, in Summary Suit No. 3 of 2018 is quashed and set aside.
7. The Trial Court shall pass fresh order after considering rival contentions of parties and impose appropriate precondition for leave to defend.
8. The writ petition stands disposed of in aforesaid terms.
9. Pending interlocutory application(s), if any, stand disposed of.

(S. G. CHAPALGAONKAR, J.)