IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3392 OF 2025

M/s. Supreme Sukhdham and Associates and Ors. ...Petitioners
vs.
Pawansheel Poultries ...Respondent

Mr. Ashwin Shete a/w. Ms. Nidhi Salgaonkar i/b. Jayakar & Partners, for the Petitioners.
Mr. Siddesh Bhole a/w. Mr. Praharshi Saxena and Ms. Bhavika Thakkar i/b. SSB Legal & Advisory, for the Respondent.

CORAM : N. J. JAMADAR, J.
DATE : MARCH 13, 2025

P.C:

1. In this petition under Article 227 of the Constitution of India, the petitioners/ original defendants assail an order dated 28th November, 2024 passed by the learned Judge, City Civil Court, Mazgaon in Summons for Judgment No. 281 of 2013 in Suit No. 6391 of 2004 whereby leave to defend the suit came to be granted subject to payment of deposit of Rs. 35 lakhs.

2. The respondent instituted a Summary Suit for the recovery of a sum of Rs. 43,52,881/- along with further interest @ 18% p.a. on the principal amount of Rs. 39,62,101/-. The plaintiff is a partnership firm, registered under Partnership Act, 1932. Defendant Nos. 1 and 4 are engaged in the business of developers and builders. The plaintiffs claimed, upon representations made by defendants Nos. 2 and 3 the plaintiff has advanced loan to

defendant No. 1. To secure the repayment of the said loan and bill discounting charges, the defendant No. 1 had drawn bills of exchange aggregating to a sum of Rs. 39,62,101/- and defendant No. 4 had accepted the said bills of exchange. The bills of exchange were, however, dishonored. Hence, the action for recovery of said amount covered by bills of exchange along with interest thereon.

3. Initially, the suit was filed on the original side of this Court. In the year 2014, suit came to be transferred to City Civil Court upon enhancement of the pecuniary jurisdiction of the City Civil Court.

4. The substance of the defence of the defendants was that the bill of exchange were to be adjusted against the amount that was due and payable by the plaintiff to defendant No. 1 towards the consultancy charges provided by defendant No. 1 to the plaintiff. The defendants sought an unconditional leave to defend the suit.

5. By the impugned order, the learned Judge, City Civil Court was persuaded to grant conditional leave to defend the suit observing, inter alia, that the defendants failed to raise any triable issue. However, the grant of summons for judgment would shut the doors for the defendants and, therefore, leave to defend was granted subject to condition of deposit of Rs. 35 lakhs. The learned Judge was of the view that there was not a shred of material to support the claim of the defendants that the bills of exchange were to be

adjusted against the consultancy charges.

6. Mr. Shete, the learned counsel for the petitioners, would urge that the learned Judge, City Civil Court did not apply the correct test as enunciated by the Supreme Court in the case of **B.L. Kashyap and Sons Limited vs. JMS Steels and Power Corporation and Anr.**[1] in the matter of grant of leave to defend the summary suit.

7. It was submitted that two of the bills of exchange dated 1st April, 2001 in the sums of Rs. 9,34,557/- and Rs. 10,27,554/- were clearly towards the interest on the amount which was allegedly advanced by the plaintiffs. The said amount, according to Mr. Shete, represented interest at an exorbitant and usurious rate. Therefore, the Court could not have granted leave to defend on the condition of deposit of the amount covered by those bills of exchange as well. Reliance was placed on the judgment of the Supreme Court in the case of **Dayawati and Anr. vs. Inderjit and Ors**[2]**.** At best, the trial Court could have directed the defendants to deposit sum of Rs. 20 lakhs only, which represented principle amount, urged Mr. Shete.

8. I find it difficult to accede to the submissions of Mr. Shete. From the tenor of the affidavit in reply to the summons for judgment, it becomes abundantly clear that the execution of four bills of exchange as such is not put in contest. It was the positive

1 (2022) 3 Supreme Court Cases 294.
2 1966 SCC OnLine SC 44.

case of the defendants that those bills of exchange were agreed to be adjusted against the amount that were due and payable by the plaintiff to defendant No. 1 towards consultancy and advisory services provided by defendant No. 1 to the plaintiff firm. Mr. Shete fairly conceded that no material could be placed on record to prima facie demonstrate that the defendant No. 1 had provided consultancy and advisory services to the plaintiff to the tune of Rs. 84 lakhs. Mr. Shete attempted to wriggle out of the situation by asserting that the defendants would be in a position to substantiate the said defence once leave to defend is granted. The submission is required to be noted to be repelled.

9. Once the execution of bills of exchange is admitted, the presumptions contained in Negotiable Instruments Act, 1988 come into play. In the absence of any material to substantiate the claim that defendant No. 1 has rendered the consultancy services, as alleged, it can not be said that the defendants had raised any triable issue. Failure to raise a triable issue as regards the specific defence, bears upon the submission premised on the transaction being affected by the Usurious Loans Act, 1918. In the least, to claim the benefit of the said Act, the defendants were required to admit the jural relationship between the parties.

10. Mr. Shete, further submitted that, apart from the bald

assertion in the plaint that the plaintiff is a registered partnership firm, there is no material to show that the plaintiff is, in fact, a registered partnership firm and, therefore, the bar to the institution of the suit under section 69(2) of the Partnership Act, 1932 comes into play. Mr. Shete was candid enough to state that the said ground was not raised before the trial Court. There is a categorical averment in the plaint that the plaintiff is a registered partnership firm. If contested, the plaintiff deserves an opportunity to place documents in support of the said claim. Even if it is assumed that the plaintiff is not a registered firm, a further question as to whether the transaction of advancing the loan was in relation to the business of the firm would warrant consideration at the trial.

11. In this view of the matter, this Court does not find any infirmity in the impugned order. The Court also cannot loose sight of the fact that the bills of exchange were payable in the year 2002. At this length of time, an order of conditional leave to defend the suit upon deposit of an amount which does not cover entire principal amount of loan, cannot be faulted at.

12. The petition, therefore, stands dismissed.

(N. J. JAMADAR, J.)