**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**NAGPUR BENCH, NAGPUR**

**WRIT PETITION NO.1590 OF 2025**

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| **Petitioner** (Original Plaintiff) | : | Kavita w/o Moreshwar Sor, Aged about 50 years, Occ. Business, R/o 143, Nehru Nagar, Tiranga Chowk, Nagpur 440024 Through Power of Attorney Shri Moreshwar s/o Chintaman Sor, Aged about 56 years, Occ. Business, R/o 143, Nehru Nagar, Tiranga Chowk, Nagpur – 440024. |
| | | – Versus – |
| **Respondent** (Original Defendant) | : | Anjali Vinayakrao Kadam w/o Arjun Shahane, R/o Plot No.95, 96, Vinayak Society, Vitthalwadi, Near Sankatmochan Hanuman Mandir, Infront of Samruddhi Daily Needs, Hudkeshwar Road, Nagpur 440 034. |

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Mr. P.P. Kothari, Advocate for the Petitioner.
Mr. H.R. Khan, Advocate for the Respondent.

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**CORAM : ROHIT W. JOSHI, J.**
**DATE : 2nd SEPTEMBER, 2025.**

**ORAL JUDGMENT :**

01. ***Rule.*** Rule made returnable forthwith. Heard finally with the consent of the parties.

02. The petitioner had sold three plots to the respondent vide registered sale-deed dated 21/04/2023. The said plots are hereinafter

referred to as the suit property. The petitioner and the respondent will be referred as plaintiff and defendant respectively.

03. As stated above, the plaintiff had sold the suit property to the defendant vide registered sale-deed dated 21/04/2023 for a total consideration of Rs.2.00 crores. The defendant had issued certain post dated cheques to the plaintiff towards payment of the sale consideration. Two cheques bearing Nos.000135 and 000136 dated 26/12/2023 and 10/01/2024 respectively were dishonoured. The amount under the said cheques was Rs.43.00 lakhs and Rs.45.00 lakhs respectively. Apart from this, a sum of Rs.2.00 lakhs, which was deducted by the defendant towards income tax was also not deposited by the defendant with the Income Tax Department. The defendant has remitted a sum of Rs.20.00 lakhs to the plaintiff out of the total outstanding consideration of Rs.88.00 lakhs. In such circumstances, the plaintiff filed a suit for recovery of amount being Summary Civil Suit No.290/2024. In the said suit, the defendant entered appearance and filed an application seeking leave to defend. The learned trial Court has allowed the application vide order dated 24/02/2025, which is impugned in the present petition by the plaintiff. The grievance of the plaintiff is that the learned trial Court has granted unconditional leave to defend.

04. The case of the defendant is that, the amount payable under two cheques, in question, was paid by her to the plaintiff and as such no amount remained outstanding. The defendant contended that apart from the amount of Rs.20.00 lakhs, which was paid through R.T.G.S., balance amount of Rs.68.00 lakhs was paid in cash to the plaintiff. In support of her contention, the defendant filed affidavits of three persons viz. Mr. Mithun Manwatkar, Mr. Prashant Wath and Mr. Saurabh Wade. The contention of the defendant is that sum of Rs.43.00 lakhs covered under cheque No.000136 dated 10/01/2024 was already paid before the date mentioned on the cheque. It is the contention of the defendant that since the amount was already paid, the plaintiff did not even issue any demand notice with respect to the said cheque of Rs.43.00 lakhs. As regards cheque No.000135 for an amount of Rs.45.00 lakhs, the case of the defendant is that a sum of Rs.20.00 lakhs was paid on 29/01/2024 through R.T.G.S. before the due date of the cheque i.e. 26/12/2023. The contention is that the amounts were paid in cash as per the demand raised by the plaintiff. As regards the receipt for payment of cash amount, the explanation offered by the defendant is that for a sum of Rs.43.00 lakhs, the plaintiff refused to issue receipt stating that the receipt will be issued once the amount of Rs.45.00 lakhs payable as per cheque no.000135 will be received. As regards the amount of Rs.45.00 lakhs, the case of the

defendant is that the plaintiff refused to issue receipt since T.D.S. amount of Rs.2.00 lakhs was not deposited with the Income Tax Department.

05. The case of the plaintiff is that the defendant did not pay any amount as alleged. The plaintiff opposed the application stating that the defendant was making reference to monetary transactions with third persons with whom the plaintiff has no concern whatsoever. The plaintiff contends that the case regarding payment of amount without obtaining receipt was completely untrustworthy inasmuch as the amounts were allegedly paid after issuance of demand notices dated 06/02/2024 and also after filing of the civil suit. It is contended that it is inconceivable that such huge amount will be paid in cash without obtaining receipt and that too after the dispute has erupted between the parties.

06. The learned trial Court has granted unconditional leave to defend in lieu of three affidavits filed by the defendant in support of her contention regarding payment of amount in cash. The learned trial Court has also observed that bank account statements filed on record indicated that cash amounts were withdrawn from the accounts.

07. Mr. P.P. Kothari, learned Advocate for the plaintiff contends that the case of the defendant is absolutely unbelievable and does not inspire confidence. He contends that the learned trial Court has completely

misdirected itself in placing reliance on certain entries in the bank account, which are in relation to third persons and are not related to the plaintiff. Mr. Kothari further contends that the affidavits filed by the defendant are also unbelievable and most importantly lacking in material particulars, such as, date of payment as also the manner in which the amount was augmented.

08. *Per contra*, Mr. H.R. Khan, learned Advocate for the defendant supports the impugned order contending that while considering an application seeking leave to defend, the Court is not supposed to deal with the matter as if it is deciding the suit finally. He further contends that all that the Court is required to see that whether a triable issue is made out. He places reliance on the judgment of the Hon'ble Supreme Court in the matter of ***Santosh Kumar vs. Bhai Mool Singh,*** reported in ***AIR 1958 SC 321*** to contend that in case, where a triable issue is made out, the Court must grant leave to defend and rather than making the leave illusory, unconditional leave to defend must be granted in fit cases.

09. The ground on which leave to defend is sought, is that the sale consideration is fully paid. Most of the consideration is said to be paid in cash. The contention is that the defendant had augmented funds from different sources and had paid the amount in cash to the plaintiff. The

affidavits of three individuals viz. Mr. Mithun Manwatkar, Mr. Prashant Wath and Mr. Saurabh Wade, are filed on record in support of the contention. In addition to this, some bank statements are filed to demonstrate that the amounts were withdrawn and transferred as stated in the affidavits of the aforesaid three persons.

10. As regards affidavit filed by Mr. Mithun Manwatkar, he is an employee of the defendant. He has stated that an amount of Rs.10.00 lakhs was paid through R.T.G.S. in two installments of Rs.5.00 lakhs each on 25/09/2023 and 04/10/2023. He states that one Mr. Saurabh Wade had withdrawn sum of Rs.13.00 lakhs from his bank account with H.D.F.C. Bank Limited between October, 2023 and November, 2023. He further claims that he had arranged for hand-loans to the tune of Rs.20.00 lakhs from market and, accordingly, cash amount of Rs.33.00 lakhs was generated. He has stated that this amount of Rs.33.00 laksh was paid in cash to the plaintiff in his presence and in presence of Mr. Saurabh Wade. The witness does not mention the date on which the amount was allegedly paid. Although, he states that an amount of Rs.20.00 lakhs was generated by hand-loan, the names of persons from whom the hand-loans were taken are not mentioned and the dates on which the hand-loans were obtained, are also not mentioned. As regards the affidavit of Mr. Saurabh Wade, his affidavit is also similar to that of Mr. Mithun Manwatkar. The

particulars regarding dates etc. are missing in his affidavit as well. These two affidavits pertain to cheque No.000136, which was issued for an amount of Rs.43.00 lakhs.

11. The learned Advocate for the defendant states that the fact that the plaintiff has not issued any demand notice with respect to the said cheque of Rs.43.00 lakhs corroborates the contents of the affidavits. The learned Advocate for the plaintiff disputes that the notice with respect to cheque of Rs.43.00 lakhs is not issued.

12. The third affidavit filed by Mr. Prashant Wath pertains to payment of amount of Rs.45.00 lakhs against cheque No.000135. He states that out of the amount of Rs.45.00 lakhs, an amount of Rs.20.00 lakhs was already paid to the plaintiff through R.T.G.S. on 29/01/2024. He states that from May, 2024 to 12th June, 2024, the defendant had paid sum of Rs.25.00 lakhs in cash to the plaintiff in his presence and in presence of one Mr. Swapnil Bhond. According to him, this amount of Rs.25.00 lakhs was paid in cash specifically on the demand of the plaintiff. He states that an amount of Rs.10.00 lakhs was paid sometime in the first week of May, 2024 by him to the plaintiff. It is stated that the defendant and her husband had arranged for cash amount of Rs.10.00 lakhs from some other business transactions and further amount of Rs.5.00 lakhs was

transferred in the account of Mr. Swapnil Bhond, which he had withdrawn from his account and paid to the plaintiff. The dates of these payments of Rs.10.00 lakhs and Rs.5.00 lakhs are not mentioned.

13. It will be pertinent to state that the plaintiff has issued notice of demand to the defendant on 06/02/2024. Although it is disputed as to whether notice is issued with respect to cheque No.000136 for sum of Rs.43.00 lakhs, issuance of notice for cheque No.000135 for Rs.45.00 lakhs is not in dispute. Thereafter, the suit is filed on 15/04/2024. The case of the defendant is that after issuance of notice and filing of the suit, payments have been made by her to the plaintiff in cash without obtaining receipts. It is highly improbable that a sum of Rs.68.00 lakhs would be paid by any person in cash without even obtaining a receipt. It must be mentioned that Mr. Prashant Wath in his affidavit filed by the defendant has stated that the plaintiff used to create scene at the construction site pressing demand for payment of money and used to create unpleasant situation in public view regularly. It thus appears that the relations between the parties were no longer cordial. There is no clarity with respect to the manner in which cash amount of Rs.68.00 lakhs was generated. As stated above, the names of the persons from whom hand-loans were allegedly obtained are not mentioned. It is also difficult to comprehend as to why amounts were allegedly transferred to the account

of other individuals and cash amount was withdrawn from the said account. The defendant could withdraw cash amount from her own account for making payment to the plaintiff. It will be pertinent to mention that with respect to payment of Rs.20.00 lakhs through Demand Draft, the defendant had created evidence by issuing WhatsApp message. However, there is no such evidence in relation to the alleged cash payment. Thus, there is no *prima facie* material to directly establish the defence regarding payment of amount of Rs.68.00 lakhs; large payments are allegedly made without obtaining receipts; payments are allegedly made after issuance of notices and also filing of the suit; relations between the parties also do not appear to be cordial; there is no clarity in the manner in which sum of Rs.68.00 lakhs was generated in cash and the dates on which the payments are allegedly made are also not stated.

14. In view of the aforesaid, in the considered opinion of this Court, at least with respect to sum of Rs.25.00 lakhs in relation to cheque No.000135 (Rs.45.00 lakhs – Rs.20.00 lakhs paid through D.D.) unconditional leave should not have been granted. The case of the defendant at least with respect to the payment of Rs.25.00 lakhs does not *prima facie* appear to be *bona fide.* In view of the aforesaid, in the considered opinion of this Court, unconditional leave should not have been granted.

15. The Hon'ble Supreme Court has also in the matter of *Santosh Kumar (supra)* relied upon by the defendant held that if the defence *prima facie* does not appear to be *bona fide*, conditional leave to defend should be granted. Likewise, in the case of ***IDBI Trusteeship Services Ltd. vs. Hubtown Ltd.,*** reported in ***2017(2) Mh.L.J. 770***, it is held that if the defence raised *prima facie* appears to be improbable, leave to defend should be granted on condition of deposit.

16. For the reasons recorded above, in the considered opinion of this Court, the impugned order needs to be modified by maintaining the order granting leave to defend subject to condition that the defendant deposits a sum of Rs.25.00 lakhs with the learned trial Court within a period of six weeks or on or before the 15th October, 2025.

17. The writ petition is thus partly allowed.

18. The order dated 24/02/2025 passed by the learned 17th Joint Civil Judge (Senior Division), Nagpur in application at Exh.14 in Summary Civil Suit No.290/2024 is modified by granting leave to the defendant in the said suit to defend the suit subject to deposit an amount of Rs.25.00 lakhs with the learned trial Court on or before the 15th October, 2025.

19. Rule accordingly with no order as to costs.

**(Rohit W. Joshi, J.)**

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