



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

WRIT PETITION NO. 638 OF 2024

Rajendra Ramlal Jaiswal,
Aged 65 years, Occ. Business,
R/o. Sarkar Nagar, Chandrapur,
Tah. & Dist. Chandrapur (MS).

. . . **PETITIONER**

// VERSUS //

Sunil Vinayak Chopde,
Aged 58 years, Occ. Business,
R/o. Haveli Garden, Rajnoor Residency,
Mustafa Colony, Chandrapur,
Tah. & Dist. Chandrapur.

. . . **RESPONDENT**

Shri Anil A. Dhawas, Advocate for petitioner.
Shri Nikhil S. Valesha h/f. Shri Anand Parchure, Advocate for respondent.

CORAM :- M. W. CHANDWANI, J.

DATED :- 04.12.2025

ORAL JUDGMENT :-

Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by the consent of the learned counsel for the parties.

3. The petitioner/plaintiff challenges the order dated 02.09.2023 passed below Exh. 25 by 3rd Civil Judge Senior Division, Chandrapur in Summary Civil Suit No. 4/2021 (for short, “the Summary

Suit”) by which conditional leave to defend was granted by the Trial Court to the defendant/respondent on deposit of Rs.5 lakhs in the Court within 45 days from the date of the impugned order.

4. The petitioner filed a Summary Suit under Order 37 of the Civil Procedure Code for recovery of Rs.22,34,100/- together with interest @ 12% per annum thereon based on ‘Kabulipatra’ and negotiable instruments. Wherein, notices were issued to the respondent thereafter, the respondent appeared and filed an application before the Trial Court for leave to defend. The Trial Court by the impugned order granted leave to the defendant to defend the Suit on deposit of an amount of Rs.5 lakhs within 45 days from the date of the order.

5. Pursuant to the said direction, the respondent deposited an amount of Rs.5 lakhs before the Trial Court. It is vehemently contended by the learned counsel for the petitioner that the said amount deposited by the respondent is beyond the period of 45 days as directed by the Trial Court. The further contention of the learned counsel for the petitioner is that the petitioner has also filed a criminal complaint under Section 138 of the Negotiable Instrument Act, 1881 in which the respondent has been convicted and an appeal is pending before the Additional Sessions Judge, Chandrapur. According to him, even in the police complaint filed by the respondent against the petitioner, the Police

authority has filed 'C-Summary' report. Therefore, it is strongly contended that the very basis of the order, wherein the Trial Court has granted the leave to the respondent to defend, was with respect to the criminal case registered against the petitioner and now it does not survives. Since the respondent has already been convicted in the criminal case, there was no need for the Trial Court to grant leave to the respondent to defend the suit. Therefore, he prayed for setting aside the impugned order or in the alternative it is submitted that the disposal of the suit be made time bound so that timely justice can be done in the matter.

6. The learned counsel for the respondent submitted that an amount of Rs.5 lakhs was taken as a hand loan but, the petitioner has fabricated the 'Kabulipatra' and also filled in the amount in three blank cheques which was given to the petitioner as security and according to him there is triable issue in the suit and justified the impugned order.

7. It appears that the petitioner has filed the Summary Suit for recovery of Rs.22,34,100/- on premise that an amount of Rs.17 lakhs were taken as hand loan whereas the respondent in his application admitted an amount of Rs.5 lakhs was taken by him from the petitioner. According to him, 'Kabulipatra' is a fabricated document it and the amount in the blank cheques were filled in by the petitioner. It appears

that relying on the admission of the respondent, the Trial Court has directed the respondent to deposit an amount of Rs.5 lakhs and granted leave to defend the suit.

8. It appears from the record that the respondent has alleged fabrication of the 'Kabulipatra' and also admitted the liability of hand loan to the tune of Rs.5 lakhs. Pursuant to the direction given by the Trial Court, the respondent deposited an amount of Rs.5 lakhs in the Trial Court. Pursuant to leave granted, the respondent has already also filed written statement and the issues also came to be framed by the Trial Court. Hence, considering the reasons mentioned by the Trial Court in the impugned order coupled with the development in the Suit, in my view no interference is required in the order passed by the Trial Court.

9. However, as requested by the learned counsel for the petitioner, the matter can be made time-bound. Therefore, the petition is disposed of with a direction to the Trial Court to decide the Suit within six months from the date of receipt of this order.

10. Rule is made absolute in the above terms. No costs.

(M. W. CHANDWANI, J.)