



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11051 OF 2025

Anil Dyaneshwar Kardile
age 49 years, Occ. Service,
R/o at present Swarajnagar Colony,
Ghule Building, Barshi Road,
Beed, Tq. & Dist. Beed.

Petitioner
orig. defendant.

VERSUS

Asha Bhanudas Lokhande
age 47 yrs, Occ. Service,
R/o Swami Samarth Nagar,
Ladgaon Road, Vijapur,
Tq. Vijapur,
Dist. Chh. Sambhajinagar

Respondent
Orig. plaintiff.

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Advocate for Petitioner : Mr. A. D. Kasliwal
Advocate for Respondents : Mr. Shaikh Tarek Mobin H.

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : January 29, 2026

FINAL ORDER :-

1. The petitioner impugns the order dated 29.7.2025 passed by Civil Judge Senior Division, Vijapur below Exhibit-22 in Special Civil Suit No.7 of 2020, by which application filed by petitioner for grant of conditional leave to defend the summary suit has been rejected.

2. The respondent/plaintiff instituted suit for recovery of amount of Rs.5,51,000/- alongwith interest from petitioner/defendant contending that petitioner was in need of amount for purchase of plot. Respondent paid amount of Rs.5,51,000/- to petitioner by way of hand loan on assurance that the amount would be refunded within a period of two months. Petitioner handed over a cheque dated 3.2.2017 drawn on State Bank of India, Vijapur, in favour of respondent. However, on presentation, it was returned with remark "funds insufficient". Petitioner assured respondent that if cheque is presented again, it will be honoured. Ultimately, upon multiple presentation, when cheque was dishonoured, plaintiff filed summary suit under order 37 of the Civil Procedure Code for recovery of the amount. Petitioner appeared before Trial Court and filed written statement alongwith application seeking leave to defend. On 10.2.2020 trial court allowed application and granted unconditional leave to defend the suit.

3. Respondent/defendant aggrieved by grant of unconditional leave approached this Court by filing writ petition no.8198 of 2020. This Court allowed the writ petition

vide order dated 1.7.2021 observing that application for leave to defend do not depict substantial defence as contemplated by first proviso to sub-rule 5 of Order 37 of the CPC. As such, no case was made out for grant of unconditional leave. In result, dismissed application by setting aside the order passed by the Trial Court.

4. On 14.7.2025 petitioner filed another application below Exhibit-22 seeking conditional leave to defendant. On 29.7.2025 Trial Court rejected said application. Hence, present writ petition.

5. Mr. A.D. Kasaliwal, learned advocate appearing for petitioner would submit that earlier petitioner had filed an application below Exhibit-8 & 12 seeking unconditional leave to defend the suit, which was allowed by Trial Court, however, this Court pleased to set aside said order. By inviting attention of this Court to the grounds raised in Writ Petition no.8198 of 2020, he would submit that respondent/plaintiff had no objection to grant conditional leave. Therefore, there was no impediment for the trial court to entertain petitioner's application for grant of conditional leave. Mr. Kasaliwal would further submit that respondents case for recovery of amount is

based on a cheque. Petitioner has raised a specific defence that a blank cheque given by him has been misused by respondent/plaintiff. As such, defence raised is probable and triable. In this backdrop, conditional leave could have been granted.

6. Per contra, Mr. Shaikh Tarek Mobin, learned advocate appearing for respondent vehemently opposed petition contending that there is no provisions under the Code to permit successive application for leave to defend. As such, once petitioner's application filed below Exhibit-8 has been rejected, petitioner cannot claim unconditional leave to defend by filing successive application.

7. Having considered submissions advanced by learned advocates appearing for respective parties, undisputedly, petitioner's previous application filed below Exhibit-8 seeking leave to defend was allowed by Trial Court, however, this Court set aside the order in writ petition no.8198 of 2020. While allowing writ petition, this Court observed as under :-

“The Trial Court has to form an opinion that substantial defence has been raised, which would entitle the grant of unconditional leave. For this, the learned trial court cannot look into the written statement accompanying the application for leave to defend, but has only

to look into the contents of the application to leave to defend. Bare perusal of the application for leave to defend indicates that there is absolutely nothing therein which could be said to form substantial defence as contemplated by the first proviso to sub-rule (5) of Order 37 of the Code.

8. The aforesaid observations made by this Court while rejecting application for leave to defend would indicate that petitioner could not make out any ground to grant leave. Pertinently, this Court did not grant leave in favour of petitioner to file successive application for conditional leave to defend or this Court did not consider molding the relief by granting conditional leave while setting aside the order granting unconditional leave.

9. It is trite that where a defendant appears in response to the suit summons and makes an application under Order 37 Rule 3 of Code for grant of leave, Court would look into reasons given in application and form opinion that the defendant raised a triable issue or he has a fair or bonafide or reasonable defence. In case, the Court considers that such defence is available, leave to defend can be granted. However, if Courts forms opinion that defence set up is illusory, sham or

practically moon shine, then ordinarily the plaintiff is entitled to leave to sign the judgment.

10. In present case, this Court while rejecting the petitioner's previous application for grant of leave clearly observed that petitioner could not make out the ground to grant leave to defend. In this background, the trial court has rightly refused to consider successive application. It is trite that principles of *resjudicata* would apply even for interim orders, which attained finality. No plausible reason is given on behalf of the petitioner as to how successive application seeking leave to defend is maintainable.

11. In result, trial Court is justified in rejecting petitioner's application for conditional leave to defend. Writ petition sans merit, hence **dismissed**. No costs.

(S. G. CHAPALGAONKAR, J.)

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