

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10573 OF 2022

- 1 M/s. Ashok Commercial Enterprises
126, Free Press House,
Nariman Point, Mumbai – 400 021.
- 2 Ramesh Uttamchand Ramchandani
Adult, Indian inhabitant,
126, Free Press House,
Nariman Point, Mumbai – 400 021.Petitioners

V/S

Rajesh Jugraj Madhani
Adult, Indian inhabitant,
A Wing, 6th Floor, Universal Business Park,
Chandivali Farm Road, Off. Saki Vihar Road,
Andheri East, Mumbai – 400 072
Residing at Flat No.09, Plot No.2,
Ugam Building, 9th Road,
Behind Haveli Temple, J.V.P.D. Scheme,
Juhi, Vile Parle (West), Mumbai.Respondent

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Mr. Darshit Jain a/w Ms. Neuty Thakkar a/w Ms. Parichehr Zaiwalla i/b
Mr. Tushar Goradia for Petitioners.
Mr. Anoshak Davar a/w Mr. Nirav Shah a/w Mr. Nishant Tanna i/b M/s. Little
& Co. for Respondent.

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CORAM: SANDEEP V. MARNE, J.
RESERVED ON: 25 JANUARY 2023.
PRONOUNCED ON: 31 JANUARY 2023

JUDGMENT:

1 Order dated August 11, 2021 passed by the City Civil and Sessions Court, Mumbai, rejecting Petitioners/Plaintiffs' application for summary judgment is the subject matter of challenge in the present Petition.

2 Petitioners are the Plaintiffs in commercial suit instituted for recovery of money with interest against defendant, who is Respondent herein. The case pleaded in plaint is that Plaintiff No.1, who is in business of trading in property and financing, was approached by Defendant for financial assistance in the form of loan of Rs.50,00,000/-. Plaintiffs paid Rs.50,00,000/- to the Defendant by RTGS on May 27, 2015. It is alleged that Defendant has executed a Bill of Exchange in favour of the Petitioners/ Plaintiffs payable on demand after the due date of June 26, 2015, which however is silent on interest payable, if any. Defendant issued letter dated August 5, 2015 to Plaintiffs confirming receipt of amount of Rs.50,00,000/- towards business loan, undertook to repay the same and issued two post dated cheques of bearing date October 30, 2015 for Rs.50,00,000/- towards principal amount and Rs.2,33,333/- towards interest. Additionally, one more Bill of Exchange was executed by Defendant for the said amount of Rs.50,00,000/- with due date of October 30, 2015. On presentation, the cheques were dishonoured with the remark 'insufficient funds'.

3 After coming across a public notice regarding auction of properties of Respondent/Defendant, notice dated June 28, 2019 was issued at the behest of Plaintiffs demanding the due amount alongwith interest. The Defendant replied the notice on August 9, 2019 disputing the notice and raising the defence of Plaintiffs not possessing licence under the provisions of Maharashtra Money-Lending (Regulation) Act, 2014. Plaintiffs presented Summary Suit under the provisions of Order XXXVII of the Code of Civil Procedure, 1908 (for short 'Code'), before the City Civil Court at Bombay on or about August 30, 2019. The same however came to be registered as Commercial Suit No.134 of 2019. Defendant made an unsuccessful attempt to seek dismissal of the suit for non-compliance of pre-institution mediation enumerated under section 12A of the Commercial Courts Act, 2015 and its Notice of Motion came to be dismissed by order dated March 10, 2021. In the meantime, Plaintiffs filed Summons for Judgment possibly under an impression that the suit was treated as a summary suit under the provisions of Order XXXVII of the Code. After noticing the provisions of Order XIII A of the Code, leave was granted to Plaintiffs to register the Chamber Summons as application for Summary Judgment. In the meantime, Defendant was permitted to file Written Statement by an order dated March 10, 2001, in which it denied various contentions raised in the Plaint in addition to raising the issue of limitation.

4 When the application for Summary Judgment No.2 of the 2019 was pressed before the City Civil Court, the same has been rejected by order dated August 11, 2021 holding that there are triable issues involved in the suit. That order is subject matter of challenge in the present Petition.

5 Appearing for the Petitioners/Plaintiffs Mr. Jain the learned Counsel would submit that the suit is based on Bills of Exchange dated May, 27 2015 and October 30, 2015, execution of which is not under dispute. He would submit that the only defence raised by Defendant while replying Plaintiffs' notice on August 9, 2019 was about non-possession of money-lenders license, which is not a requirement for suit based on Bills of Exchange as per the settled position of law. He would submit that the admission of the claim can be inferred on the basis Defendant's letter dated August 5, 2015, issuance of post-dated cheques and non-denial of receipt of Rs.50,00,000/- by Defendant. Mr. Jain would take me through the provisions of second Proviso to sub-rule 5 of Rule 3 of Order XXXVII of the Code in support of his contention that since there is an admission of claim on the part of the Defendant, the Court could not have granted leave to defend without the condition of deposit of the admitted amount. He would rely upon the judgment of the Apex Court in ***IDBI Trustee-ship Services Limited vs. Hubtown Ltd. (2017) 1 SCC 568*** laying down broad principles on interpretation of provisions of Order XXXVII Rule 3 of the Code. Mr. Jain

would then take me through the provisions of Order XIII-A of the Code introduced by way of amendment in Commercial Courts Act, 2015 providing for Summary Judgment. He would submit that the provisions of Order XIII A of the Code are even wider than the provisions of Order XXXVII of the Code. He would further submit that Defendant failed to file reply to the application for Summary Judgment as mandated under Order XIII A, Rule 3 of the Code. Since the claim of Plaintiffs is virtually admitted, the Court ought to have pronounced judgment on the claim or in the alternative at least passed a conditional order under clause (b) of Sub-rule 1 of Rule 6 of Order XIII A of the Code.

6 *Per contra*, Mr. Davar the learned Counsel appearing for Respondent/Defendant would oppose the Petition and support the order passed by the City Civil Court. He would submit that the application filed by Plaintiffs for Summary Judgment under the provisions of Order XIII A of the Code was not maintainable in view of provisions of sub-rule 3 of Rule 1 of Order XIII-A of the Code. He would submit that the Suit was originally filed as Summary Suit and averments made in paragraphs 14 and 18 of the Plaint leaves no matter of doubt that what was originally filed was a Summary Suit. He would further submit that Summary Suit was otherwise not maintainable in so far as prayer for payment of interest is concerned as the Bills of Exchange did not provide for payment of interest.

7 Mr. Davar would further contend that the suit is hopelessly barred by limitation. The suit is premised on Bill of Exchange dated May 27, 2015, alleged admission of claim vide letter dated August 5, 2015 and cheques bearing dates October 30, 2015, the same presented on or about August 30, 2019 is thus clearly barred by limitation. Even if the date of dishonor of cheques is to be taken into consideration for computation of limitation, the dishonor took place on November 2, 2015, thereby throwing the suit out of limitation. The notice dated June 28, 2019 issued after lapse of 4 years would not revive the time barred claim of the Plaintiffs.

8 Mr. Davar fairly concedes that the provisions of Maharashtra Money-Lending (Regulation) Act, 2014 would not apply to suit based on Bill of Exchange. He however submits that the defence of Defendant is slightly different, viz. about misrepresentation about possession of valid money lenders licence at the time of lending money and subsequent promise of writing off loan by plaintiff after defendant flagging the issue of non-possession of such a license. He would submit that Plaintiffs' reliance on their own books of accounts cannot be construed as an admission on the part of the Defendant who never confirmed the same.

9 In rejoinder, Mr. Jain would dispute the contentions of Mr. Davar that the date of demand reflected in Bills of Exchange would constitute starting

point of limitation. In this regard he would rely upon the judgment of this Court in ***Bank of India vs. Lafans India Export Private Limited, (1994) 1 Bom.C.R 419.*** He would also rely upon the judgment of this Court ***Madhya Pradesh Industrial Development Corporation Ltd. Vs. Mumbai District Central Co-operative Bank Ltd., AIR 2005 Bom 318,*** in support of his contention that issue of limitation is irrelevant while deciding summary suits. He would also rely upon the judgment of Delhi High Court ***Su-Kam Power Systems Ltd. vs. Mr. Kunwer Sachdev & Anr., 2019 SCC Online Del 10764*** in support of his contention that the Commercial Courts Act, 2015 has been enacted with an intent to improve efficiency and to prevent delay in disposal of commercial cases and that in the event of a Court arriving at a conclusion that there is no reasonable prospect of success for the Defendant, the claim has to be allowed by pronouncing a Summary Judgment. Though not fully relevant to the present case, he would contend that the scope of provision of summary judgment is now so wide which would cover even a claim for damages.

10 Rival contentions of the parties now fall for my consideration.

11 Before advertng to the merits of the contentions raised by rival parties, it is necessary to first resolve the controversy as to whether the application for Summary Judgment of the Petitioners/Plaintiffs is required to

be considered under the provisions of Order XXXVII or Order XIII A of the Code. This confusion is created essentially on account of reliance by Mr. Jain on provisions of Order XXXVII of the Code as well as on judgment in ***IDBI Trustee-ship Services Limited vs. Hubtown Ltd.*** (supra) laying down broad principles on the issue of grant of leave to defend under those provisions. These submissions created an impression as if the Petitioners/Plaintiffs are pressing their claim under the provisions of Order XXXVI of the Code. However, as the submissions of the rival parties progressed it became apparent that Plaintiffs' claim is required to be considered under the provisions of Order XIII-A of the Code. To achieve more clarity, it would be profitable to make reference to the order passed by the City Civil Court on November 22, 2019 when Unregistered Summons for Judgment was filed by Plaintiffs under the provisions of Order XXXVII of the Code. The order reads thus:

"1 Heard Adv. Yasmin Tavaría for plaintiff. She has drawn my attention to Order 13-A of Code of Civil Procedure that any party can apply for summary judgment after summons has been served on the defendant. The defendant has been duly served with writ of summons. On perusal of roznama Adv. Asha Kanzariya i/b Adv. Upadhyay appeared and filed undertaking to file vakalatnama on behalf of defendant.

2 As per sub rule 2 of Order 13-A the stage for application for summary judgment is provided that an applicant may apply for summary judgment at any time after summons has been served on defendant. The writ of summons is served on defendant. The advocate of the defendant has filed an undertaking to file

vakalatnama behalf of defendant. Hence leave granted to the plaintiff/applicant to register summary judgment.”

12 Thus, as per order dated November 22, 2019, Plaintiffs' application came to be numbered as the one for Summary Judgment under the provisions of Order XIII-A of the Code. Therefore, the provisions of Order XXXVII of the Code would not be directly relevant while examining correctness of the impugned order dated August 11, 2021 passed by the City Civil Court. Though Mr Jain concedes to this position, he further adds that the broad principles applicable for grant of leave to defend in summary suits under Order XXXVII Rule 3 as enunciated in ***IDBI Trustee-ship Services Limited vs. Hubtown Ltd.*** (supra) would continue to apply even to Summary Judgment in commercial suits, as the provisions in Order XIII-A merely broaden what was already provided for in Order XXXVII.

13 Now that a clarity is achieved about the exact provision of the Code under which application was filed for Summary Judgment, the objection raised by Mr. Davar about maintainability of Plaintiffs' application under Order XIII-A of the Code needs to be determined. Relying on provisions of sub-rule (3) of Rule 1 of Order XIII A of the Code, Mr. Davar has contended that since the suit was initially filed as a summary suit, the provisions of

Order XIII-A of the Code would have no application to Plaintiffs' suit. Sub-rule (3) of Rule 1 of Order XIII A of the Code reads thus:

“(3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.”

14 Here again, there is some degree of dispute as to whether the suit was initially filed as a summary suit or not. It was undoubtedly presented as a summary suit. It was however registered as Commercial Suit by the Court on its own. Whether act of 'presentation' would amount to 'filing' within the meaning of sub-rule 3 of Rule 1 of Order XIII A of the Code will have to be decided. Undoubtedly sub-rule 3 of Rule 1 of Order XIII A of the Code uses the word 'filed', and not 'presented' or 'registered'. I could have proceeded to determine this controversy, however, I find that it is not necessary to do so. Assuming that plaintiffs' suit is initially filed as a summary suit under Order XXXVII of the Code, thereby taking it out of ambit of provisions of Order XIII-A of the Code, would it's subsequent conversion as commercial suit entail loss of both the rights viz. (i) to seek summary judgment under Order XIII-A as well as (ii) pronouncement of judgment under Order XXXVII, Rule 3 of the Code?. To paraphrase, would conversion of summary suit into a commercial suit would put a Plaintiff in a disadvantageous position where he loses right to seek pronouncement of judgment under Order XXXVII,

Rule 3 of the Code as well as attracts the bar for seeking summary judgment under sub rule 3 of Rule 1 of Order XIII A of the Code?

15. Through Mr. Dawar strenuously pressed his objection about non-applicability of provisions of Order XIII-A to Plaintiff's application, upon being confronted with the above conundrum, he fairly concedes to the position that a Plaintiff in summary suit cannot be put to a disadvantageous position merely because his summary suit is converted into a commercial suit. The objective behind incorporating provision of sub-rule 3 of Rule 1 of Order XIII A of the Code is to prevent Plaintiff who once attempts pronouncement of judgment under Order XXXVII Rule 3 of the Code and upon conversion of his summary suit into commercial one, seeks to have another bite at the cherry by seeking pronouncement of judgment under Order XIII-A of the Code. The provisions of sub-rule 3 of Rule 1 of Order XIII A cannot be interpreted to mean that Plaintiff in a summary suit which is converted into commercial suit would loose both rights of pronouncement of judgment under Order XXXVII Rule 3 of the Code as well as seeking summary judgment under Order XIII A of the Code. Thus, the objection about non-maintainability of application for Summary Judgment filed by the Petitioners is repelled.

16 Turning to the merits of the Order passed by the City Civil Court rejecting application for Summary Judgment, Mr. Jain has made strenuous efforts to demonstrate that Plaintiffs' claim stands admitted and that there is no probable defence available to Defendant. He has placed reliance on the judgment of Single Judge of Delhi High Court ***Su-Kam Power Systems Limited*** (*supra*) in which the object and purpose of introducing special provision under Commercial Courts Act for summary judgment has been discussed. It is held in paragraphs 39, 40, 44, 45, 48, 49, 50 and 52 as under:

“39. The Commercial Courts Act, 2015 has been enacted with the intent to improve efficiency and reduce delay in disposal of commercial cases. The relevant portion of the Statement of Objects and Reasons of the Commercial Courts Act, 2015 is reproduced hereinbelow:-

“to have a streamlined procedure which is to be adopted for the conduct of cases in the Commercial Courts and in the Commercial Divisions by amending the Code of Civil Procedure 1908, so as to improve the efficiency and reduce delays in disposal of commercial cases. The proposed case management system and provisions for summary judgment will enable disposal of commercial disputes in a time bound manner.”

(emphasis supplied)

40. Amended Order XIII A of CPC, as applicable to commercial disputes, enables the Court to decide a claim or part thereof without recording oral evidence. Order XIII A of CPC seeks to avoid the long drawn process of leading oral evidence in certain eventualities. Consequently, the said provision enables disposal of commercial disputes in a time bound manner and promotes the object of the Commercial Courts Act, 2015.

44. While deciding the test for summary judgment under Rule 24.2, House of Lords in *Three Rivers District Council and Others vs. Governor and Company of the Bank of England*, [2003] 2 A.C.1, reiterated the observation in *Swain v Hillman*, [2001] 1 All ER 91 that the word 'real' distinguishes 'fanciful' prospects of success and it directs the Court to examine whether there is a 'realistic' as opposed to a 'fanciful' prospect of success. The House of Lords in *Three Rivers District Council (supra)* also held that the Court while considering the words 'no real prospect' should look to see what will happen at the trial and that if the case is so weak that it has no reasonable prospect of success, it should be stopped before great expenses are incurred. ”

45. The Supreme Court of Canada in *Robert Hryniak v. Fred Mauldin*, 2014 SCC OnLine Can SC 53 has also held that trial should not be the default procedure. In the said case, which was an action for civil fraud against the appellant and a corporate lawyer, who acted for the appellant, the allegation was that the appellant, through that company, had transferred more than US \$10 million to an offshore bank following which he claimed that the money had been stolen. That money had initially been transferred to the appellant's company, by the respondents therein, in respect of an investment opportunity.

48. In fact, the Federal Court Ottawa, Ontario in *Louis Vuitton Malletier S.A. v. Singga Enterprises (Canada) Inc.*, 2011 FC 776 and High Court of Ireland in *Abbey International Finance Ltd. v. Point Ireland Helicopters Ltd.* [2012] IEHC 374, have held that even damages as well as unliquidated compensation can be awarded by way of summary judgment. ”

49. Consequently, this Court is of the view that when a summary judgment application allows the Court to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. It bears reiteration that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the Court the confidence that it can find the necessary facts and apply the relevant legal principles so as to resolve the dispute as held in *Robert Hryniak (supra)*.

50. In fact, the legislative intent behind introducing summary judgment under Order XIII A of CPC is to provide a remedy independent, separate and distinct from judgment on admissions and summary judgment under Order XXXVII of CPC.

52. Consequently, this Court is of the opinion that there will be 'no real prospect of successfully defending the claim' when the Court is able to reach a fair and just determination on the merits of the application for summary judgment. This will be the case when the process allows the court to make the necessary finding of fact, apply the law to the facts, and the same is a proportionate, more expeditious and less expensive means to achieve a fair and just result."

17 No doubt Commercial Court is required to pronounce summary judgment in the event it finds that there would be no real prospect of the Defendant successfully defending the claim. It is, therefore, necessary to examine whether there is a possibility of Defendant in the present case defending the claim.

18 True it is that Defendant failed to file reply to the Application seeking Summary Judgment. However, Written Statement of Defendant has been filed and taken on record. Therefore, defences raised to the claim of the Plaintiffs are available for consideration. Defendant has raised defence of limitation in its Written Statement. Majority of events leading to filing of the suit have taken place in the year 2015. The first Bill of Exchange was issued on May 27, 2015 with due date as June 26, 2015. The alleged promise to repay the loan amount was made by Defendant in the form of letter dated August 5, 2015. On the same day, Defendant issued two cheques dated October 30, 2015, Rs.50,00,000/- towards principal amount and Rs.2,33,333/- towards interest. The second Bill of Exchange was

issued on October 30, 2015. In their notice dated June 28, 2019 Plaintiffs have disclosed the date of dishonor of the cheques as November 2, 2015. After these events of the year 2015, there is a long hiatus for about 4 years and the claim for repayment of loan amount was raised by the Plaintiffs by issuing notice dated June 28, 2019.

19 Mr. Davar has contended that the period of limitation would commence either from 'due date' or atleast from the date of dishonor of cheques. Mr. Jain would contend that the Bills of Exchange were payable 'on demand' and such demand was raised by Plaintiffs on June 28, 2019. In this connection reliance is placed on judgment of this Court in **Bank of India** (supra). Plaintiffs deposited the cheques and according to Mr. Davar deposit of cheques would itself constitute 'demand'. I do not wish to record any findings on these contentions at this stage as doing that may affect the mind of the City Civil Court while deciding the issue of limitation. Suffice it to state at this juncture that a triable issue does exist atleast on the point of limitation.

20 The City Civil Court has held requirement of possession of lending license under section 13(1) the Maharashtra Money-Lending (Regulation) Act 2014 as a triable issue. However, Mr. Davar has once again fairly conceded that the since suit is based on Bills of Exchange, the same would

not be hit by the provisions of section 13(1) of the Act of 2014. However, there are other issues especially with regard to limitation, which in my view would not put the claim of Plaintiffs as the one which is impossible of being defended or zero prospect of Defendant successfully defending the same.

21 I am therefore of the view that the present case would not be covered by eventuality of clause (a) of Rule 3 of Order XIII A of the Code where this court is in a position to record a finding with degree of certainty that Defendant has no real prospect of successfully defending the claim. Therefore, no case was made out for City Civil Court to pronounce a summary judgment on the claim of Plaintiffs under Order XIII Rule 6 of the Code.

22 This leads me to the alternative submission made by Mr. Jain that even if summary judgment could not have been pronounced on Plaintiffs' claim, the City Civil Court could have atleast made a conditional order under Order XIII-A, Rule 7 of the Code, which read thus:

“6. Orders that may be made by Court. —(1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:—

- (a) judgment on the claim;
- (b) conditional order in accordance with Rule 7 mentioned hereunder;
- (c) dismissing the application;

(d) dismissing part of the claim and a judgment on part of the claim that is not dismissed;

(e) striking out the pleadings (whether in whole or in part); or

(f) further directions to proceed for case management under Order XV-A.

(2) Where the Court makes any of the orders as set forth in sub-rule (1)(a) to (f), the Court shall record its reasons for making such order.

7. Conditional order. —(1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it will do so, the Court may make a conditional order as set forth in Rule 6(1)(b) above.

(2) Where the Court makes a conditional order, it may:—

(a) make it subject to all or any of the following conditions:—

(i) require a party to deposit a sum of money in the Court;

(ii) require a party to take a specified step in relation to the claim or defence, as the case may be;

(iii) require a party, as the case may be, to give such security or provide such surety for restitution of costs as the Court deems fit and proper;

(iv) impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion; and

(b) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.”

23 Thus again, *sine qua non* for making a conditional order under Order XIII A, Rule 7 of the Code, is arrival of a conclusion by commercial court that there is a possibility of the claim succeeding. Passing of conditional

order again requires the same rigor of making out a case of zero possibility of defendant raising any plausible defence. As urged by Mr. Jain, let me now examine whether the Court could have made an order of conditional leave to defend by taking into consideration the broad principles enunciated by the Apex Court in **Hubtown Ltd.** (supra). The principles enunciated are as under:

17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36] , as follows:

17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.

17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.

17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.

17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.

Thus in the event of the defendant satisfying the court that it has (i) substantial defence, that is, a defence that is likely to succeed or (ii) fair or reasonable defence, although not a positively good defence, plaintiff would not be entitled for pronouncement of judgment and defendant would get a unconditional leave to defend. Even for making a conditional order of leave to defend any of the following eventualities must exist (i) defendant raises triable issues, and a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues (ii) defence is plausible but improbable or (iii) where any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him. Applying above

parameters to the present case, it cannot be said that the plaintiff made out a case for pronouncement of judgment or even for a conditional order of leave to defend. The defence of defendant *inter alia* on the point of limitation is substantial one considering the fact that plaintiffs demanded the amount by depositing cheques in November 2015. Plaintiffs contend that the defendant requested for deferring the demand, which is required to be proved by adducing evidence as the alleged request is not in the form of a written communication. Thus, it is not possible to record a finding at this juncture that there is certain possibility of success of claim of plaintiffs. To arrive at such that finding, process of trial may have to be undertaken. Therefore, even making of a conditional order under Rule 6(1)(b) of Order XIII A of the Code is not warranted.

24 Resultantly, I do not find any error being committed by the City Civil Court in passing the impugned order. The Petition is devoid of merits. It is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)