

MHKO050001522023



**Order below Exh. 16 in Summary Civil Suit No. 07/2023**

This is the application filled by the defendant for leave to defend and allow him to file written statement.

2. Defendant in his application at Exh. 16 stated that he is not power loom businessman in the Ichalkaranji. He is not liable to pay due amount. Plaintiff has not pleaded fact in plaint provision under Order 37 of CPC. There is no agreement in respect of 18% pa interest. Defendant has not purchased goods mentioned in the plaint. The due amount mentioned in the plaint is of Rs. 36,871/- which is illegal and he is not liable to this amount. In the due amount column wages charges Rs. 500/- is wrongly mentioned. Defendant has not purchased any yarn or cloth from plaintiff. Defendant has not given cheque no. 506846 dated 17.05.2022 of Rs. 91,815/- to the plaintiff. Plaintiff has misused the blank cheque of defendant. Defendant has not received yarn and cloth from plaintiff. In May 2021 plaintiff made proposal to defendant to open bank account in the name of plaintiff. Plaintiff opened bank account in the name of defendant in Jivaji Sahakar Bank Ltd. Ichalkaranji. At the time of opening bank account plaintiff made signature on bank papers that he know the defendant. After opening bank account in the name of defendant, bank has given

cheque book . Due to relation of plaintiff and defendant, plaintiff has given blank disputed cheque to the plaintiff. The present suit has been filed by the plaintiff with a view to recover the amount from the defendant by misusing the cheque. The documents filed alongwith suit is false. Defendant has not received notice. Defendant is liable to give opportunity for fair trial to defence. Defendant's defence is legal one and in that respect issued need to be framed is important. Therefore, defendant prayed that his application for leave to defend be allowed.

3. Plaintiff has filled his say at Exh. 17 and stated that the present application is false and not correct. The contents in the application is absurd and pointless. In the application triable issues are not disclosed. The defendant has denied the allegations of the plaintiff's claim as mere written statement. Defendant has not given strong reason. Plaintiff has given cheque return notice to the defendant and he received it. Hence, he prayed that application be rejected.

4. Heard advocate of both sides. Perused application and say. It appears that in the application of defendant there is no single statement regarding what is the probable defence of the defendant and what triable issues will arise in the suit. It is the duty of the defendant to show that what triable issues will arise in the suit to grant him permission for leave to Defend. Only he be allowed to file WS is not the ground to allow the application for leave to defend. The application for leave to defend is not like permission to file WS. The defendant has to show probable defence for triable issues. But in this

case it is absent in the application of defendant. Also it appears from the application that defendant is only denying the case of the plaintiff which cannot be considered the probable defence for leave to defence. Defendant has relied upon Mafatlal Finance Ltd. vs. Express Industrial Services Private Ltd., 2000 (1) Bom. C.R. 204. It appears that the said case law is not relevant for application for leave to defence. Hence, it not helpful to defendant. Hence, this application is liable to be rejected.

**ORDER**

Application at Exh 16 is hereby rejected.

Ichalkaranji  
Date: 16.11.2024

**(S. S. Pednekar)**  
4<sup>th</sup> Jt. Civil Judge Junior Division,  
Ichalkaranji.