

MHKO050058092024



**Order below Exh. 15 in Summary Civil Suit No. 135 / 2024**  
**(Vilas Balaso Chanvire Vs. Imtiyaj Balam Bagwan)**

This is an application for leave to defend under Order XXXVII of the Code of Civil Procedure.

2. According to the defendant, the alleged suit is filed against him for recovery of hand loan. The plaintiff is not familiar with the defendant. Defendant has obtained loan amount of Rs.2,50,000/- on 12.6.2024 and subsequently he obtained amount of Rs.2,51,000/- on 20.6.2024 is totally false. The defendant never issued cheques to the plaintiff. The defendant has obtained loan from well known patsanstha in Ichalkaranji. At that time, the said sanstha obtained blank cheques as well as blank receipts from the defendant. He has repaid the loan amount. However, the responsible persons of said sanstha misused the documents handed over by the defendant and filed S.C.C. No. 1966/2020 and 1967/2020 by Amar Nalawade and Laxman Gaikwad. There is no transaction between plaintiff and defendant. Therefore, it is necessary to brought on record, the defence in order to decide the matter on merit. Hence, he prayed to allow the application.

3. The plaintiff has resisted the application by filing his say. According to the plaintiff, he has filed present suit for recovery of

money on the basis of Promissory Note executed by defendant in favour of plaintiff. The plaintiff has also filed two cheques given by the defendant. The defendant has narrated his defence in Para 7 of the application which is false. He has not mentioned details regarding the loan amount obtained by him from so called well known patsanstha. The defendant has never led any complaint regarding promissory note and cheques. Therefore, there is no triable issue arise in this matter. The application for leave to defend is baseless and not maintainable.

4. Heard both the sides. Perused the application, say and relevant documents placed on record.

5. The record shows that, the plaintiff has filed promissory note dated 20.6.2024 and 12.6.2024 at Exh.3/1 and 3/4. He has also filed cheques at Exh.3/2 and 3/5. The returned memo of the cheque are also filed on record at Exh.3/3 and 3/6. On perusal of cheques it shows that, it bears the name of defendant as a drawer. Both the cheques are returned for the reason 'funds insufficient'. Both the cheques shows that, they are issued on 23.9.2024 and 30.9.2024 respectively. The plaintiff has filed present suit on 13.10.2024. Defendant has not made any complaint regarding his Cheques.

6. It is well settled that, the defendant raises a triable issue indicating that, he has a fair, bonafide and reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to

unconditional leave to defend. The documents placed before me i.e. cheques issued by the defendant from his account, there are presumption of law under Negotiable Instruments Act that, when the cheque has been issued it is issued for legal debts and liabilities and issued by the account holder. Further there is supportive evidence of promissory note on record.

7. The entire nature of the case is that, hand loan amount is paid by the plaintiff to the defendant of Rs. 5,01,000/-. The defendant has signed promissory note in favour of plaintiff and also issued two cheques in favour of plaintiff. As far as the nature of the suit is concerned, this is summary suit as per Order XXXVII of Code of Civil Procedure. When the suit is based on cheque, it is covered under summary suit. So far as the triable issue is concerned, the plaintiff has produced cheques, dishonoured memo and promissory note. So far as the truth of the present case is concerned, two cheques issued by the defendant are strong elements is cannot be ignored. The purpose of the summary suit is expeditious trial and justice. When there is a specific case made out by the plaintiff and there is no triable issue then, leave to defend cannot be granted.

8. The plaintiff has also placed reliance on **Bharat Mehra vs. Shree Tirupati Greenfield Developers, Commercial Suit No.1166/2019**, wherein it is held that, the defendants did not take any action for the alleged misuse of bill of exchange and cheques in the service of demand notice, then the presumption contended in Section 118-B of the Negotiable Instruments Act,

1881 come with full force. The defence, thus, raised on behalf of the defendant is unworthy of acceptance and falls in the category of sham and moonshine defence. Relying on this citation and on the basis of the entire record before me, I am of the view that, the defendant is not entitled for leave to defend. In the said scenario, the application will have to be rejected. Hence, I find no substance in the application for leave to defend. Hence, I pass following order :-

**ORDER**

Application is rejected.

Ichalkaranji.  
Date : 18.11.2025

**(G. M. Nadaf)**  
Civil Judge Senior Division,  
Ichalkaranji.