

S.C.S. NO. 04/2012Nalmati Rama TulsiVs.Jagdish Rama Jadhav & Other(Dated- 02/03/2022)

This is an application for leave to defend filed by defendant. Perused the application and say. Heard learned advocated for both sides considerable length.

2. Defendant contended that, they have been served with summons for judgment. Further, he contended that, plaintiff has misused the cheque given by defendant for security. Therefore, he has probable defence to make. He prayed to allow the application.

3. Whereas, Learned advocate by plaintiff argued that, this is summary suit. Therefore, defendant while seeking leave to defend he has to deposit certain amount. He relied on Southern Sales & Ors. Vs. Sauermilch Design & Handels GMBH, 2008 0 Supreme (SC) 1484 and IDBI Trusteeship Services LTD Vs. Hubtown Ltd, 2016 0 Supreme (SC) 892. Wherein, The Hon'ble Apex Court held that, the Court has discretion to grant leave to defendant conditional or un-conditionally.

4. The defendant through this application denied the claim of plaintiff. Further, he has contended that, he has issued the cheque to plaintiff. The plaintiff had misused the cheque which was given for security purpose. From the contents of the application there is plausible defence to make. Therefore, an opportunity need to be given to defendant to make their defence. Furthermore, the case law relied by Learned advocate for plaintiff is not applicable for want of similar fact. Considering the facts and circumstances on record it would not be just

and proper to impose any condition where defendant is ready to contest the matter. Hence, following order :

ORDER

Application is allowed.

Place : Palghar
Date : 02/03/2022.

(S.H.Telgaonkar)
3rd Jt. Civil Judge Jr. Dn.
Palghar.

CERTIFICATE

I affirm that the contents of this PDF file order are same word to word, as per the original order.

Name of the Stenographer :- Shri. S. S. Modke

Court :- Smt. S.H.Telgaonkar, J.M.F.C. (3rd Court), Palghar

Date :- 02/03/2022

order Signed by the presiding

officer on :- 02/03/2022

order uploaded on :- 03/03/2022