

MHNG160008662018



ORDER BELOW EXHIBIT-9

This is the application filed by the defendant for grant of permission to defend the suit. It is the contention of the defendant that plaintiff has filed this Summary Suit for recovery of Rs.2,65,000/- . This suit is based on false and forged documents Defendant has not received any amount from the plaintiff. Defendant was in urgent need of money. Hence he approached to the plaintiff through Balkrushna Khandait and obtained Rs.1,00,000/- from plaintiff and furnished blank stamp paper of Rs.500/- on signing on it as security of that transaction. But the plaintiff prepared false sale deed by using that stamp paper. Plaintiff is doing illegal money lending business. Plaintiff has also obtained from his one blank signed cheque and misused it. Therefore defendant wants defend this suit.

2. Plaintiff by filing his say at Exh-10 opposed this application contending that defendant is putting false and baseless story. He contended that defendant was not ready to continue with the agreement therefore plaintiff asked for return of amount. Hence defendants liability arise to return that amount. Defendant by playing fraud on the court wants to get relief of leave to defend this suit. Defence of the defendant is not valid. Hence he sought for rejection of this application.

3. Heard learned counsel for both the sides. They argued as per their application and say. This suit is filed under Order XXXVII, Rule-2(b) of C.P.C. As per Order-XXXVII, Rule-3(4) of the C.P.C. If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4-A in Appendix-B or such other Form as may be

prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit. But in the present suit it appears that plaintiff has not served any summons on the defendant as mentioned in Order-XXXVII, Rule-3(4) of C.P.C. and defendant directly filed this application for leave to defend this suit.

4. As per Order-XXXVII, Rule-3(5) of C.P.C. Defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just. Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious. Defendant has filed this application on affidavit stating the transaction between him and the plaintiff was loan transaction and he has furnished the stamp paper to the plaintiff as security for that transaction but the plaintiff misused it. As there is defence to the defendant opportunity should be given to prove his defence in the interest of natural justice. Therefore, I do not found any hindrance for allowing this application. Hence following order :-

ORDER

1. This application is allowed.
2. Defendant is hereby permitted to defend this suit.
3. Cost in cause.

Date :- 10/10/2019

(S.P. Wankhade)
Civil judge, (Jr. Div.), Mouda,
Tq-Mouda, Dist-Nagpur.

Endorsement

Case argued on	:	10.10.2019
Order dictated on	:	10.10.2019
Transcription ready on	:	10.10.2019
Order checked and signed on	:	10.10.2019
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