

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 888 OF 2014

Rampra Steel Industries Pvt. Ltd. .. Petitioner
vs.
Plasma Pvt. Ltd. .. Respondent

Mr. Sham Walve for the Petitioner.
Mr. Rohaan Cama, Mr. Mihir Mody, Ms Priyanka Desai and
Mr. Nikhil C. i/b M/s. Ashar & Co. for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 26 MARCH, 2015.

P.C. :-

1] This Civil Revision Application impugns the order dated 18 June 2014 made by the City Civil Court granting unconditional leave to the respondent to defend in Summary Suit No.3408 of 2012.

2] The impugned order, after consideration of the materials on record, comes to the conclusion that apart from the issue of territorial jurisdiction, the respondent had raised triable issues by way of fair, bonafide and reasonable defence. Accordingly, unconditional leave came to be granted to the respondent.

3] There is no jurisdictional error in making of the impugned order. The material on record, particularly the correspondence exchanged between the parties, even prior to issue of legal notice by the petitioner or the institution of the Summary Suit, clearly shows that the disputes had arisen between the parties in the matter of supply of goods. It has been the case of the respondent that the goods of the inferior quality came to be supplied. As a result, it was

the further case of the respondent that it is they to suffer losses. On the other hand, it is the case of the petitioner that they supplied precisely material which was ordered and it is perhaps the respondent, who were not clear about their own requirements. The learned counsel for the petitioner, by reference to some correspondences, also pointed out that the petitioner had offered to take back some material. However, the respondent, rather than return such material, proceeded to make use of the same.

4] All the aforesaid are disputed issues, which would be required to be decided upon a trial. The correspondences on record, however, indicate that a genuine dispute has arisen between the parties and in this context, it cannot be said that the defence raised by the respondent is either in the nature of an afterthought or amounts to a moonshine.

5] In case of *M/s. Mechalec Engineers and Manufacturers vs. M/s. Basic Equipment Corporation* - AIR 1977 SC 577, the Hon'ble Apex Court has laid down the following principles to be applied in the matter of grant of leave to defend in summary suit.

8. *In Smt. Kiranmoyee Dassi v. Dr. J. Chatterjee (1945), 49 Cal WN 246 at p.253, Das, J. after a comprehensive review of authorities on the subject, stated the principles applicable to cases covered by Order 37, C.P.C. in the form of the following propositions (at p. 253):*

"(a) *If the defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.*

(b) *If the defendant raises a triable issue indicating that he has a fair or bona fide or 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.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security.

(d) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the Defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the Court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on such condition and thereby show mercy to the defendant by enabling him to try to prove a defence".

6] Applying the aforesaid principles, it cannot be said that there is any jurisdictional error in making of the impugned order and in granting unconditional leave to defend.

7] The Civil Revision Application is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)