

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**APPEAL FROM ORDER NO. 1197 OF 2014
WITH
CIVIL APPLICATION NO. 1448 OF 2014**

M/s. Jaisagar Construction Co. & Anr.	... Appellant.
V/s.	
M/s. Globond India	... Respondent

Mr. Farhan Dubhash with Ms. Harshal Manik i/b M/s. Rustamji & Ginwala for the appellant.
Mr. Dipen Furia i/b Shah & furia Associate for the respondent.

**CORAM : K. K. TATED, J.
DATED : 17/03/2015.**

P.C.:

. Heard learned Counsel for the parties.

2 By this Appeal from Order, the appellant defendant challenges the order dated 13.11.2014 passed by Bombay City Civil Court at Bombay in Summons for Judgment No. 124 of 2013 in Summary Suit No. 565 of 2013 directing the defendant to deposit a sum of Rs.4,41,382/- towards the conditional leave to defend the suit.

3 In the present proceeding, the respondent plaintiff filed summary suit no. 565 of 2013 against the defendants for recovery of sum of Rs.7,53,610.40 and further interest on principal amount of Rs.4,41,382/- @ 24% per annum from the defendants, on the basis of five invoices which are as under:

Sr. No.	Invoice No.	Date	Amount of Goods supplied
1	'00041	18/06/09	Rs. 1,41,118.00
2	'00068	06/08/09	Rs.1,29,355.00
3	'00124	03/12/09	Rs.2,90,066.00
4	'00144	28/01/10	Rs.3,23,782.00
5	'00005	05/04/10	Rs.1,17,600.00
		TOTAL	Rs. 10,01,921.00

4 In the said summary suit, plaintiff preferred summons for judgment no. 124 of 2013. In that summons for judgment, the plaintiff restricted his claim in respect of invoice no. 00144 dated 28.01.2010 of Rs. 3,23,782/- and invoice no. 00005 dated 05.04.2010 of Rs. 1,17,600/-. In the said summons for judgment, the Trial Court passed an impugned order dated 13.11.2004 granting conditional leave to the defendant on depositing sum of Rs. 4,41,382/- in the Court within six weeks from the date of order. Hence, the appellants/defendants preferred present Appeal from Order.

5 The learned Counsel Mr. Dubhash appearing on behalf of Appellant/defendant submits that the Trial Court erred in coming to the conclusion that there was contract between the plaintiff and defendant for supply of goods. He submits that defendant was working for M/s. Glint Conception for their constructions activities. He submits that M/s. Glint Conception placed the order on plaintiff for supply of material. He submits that as per quotation no. 1 dated 25.01.2009 of M/s.Glint Conception which was specifically agreed between defendant and M/s.Glint Conception that the entire material will be supplied by M/s. Glint Conception and defendant will execute the said work. He submits that pursuant to the said quotation, M/s.Glint Conception

placed order on plaintiff for supply of material from time-to-time. He submits that the plaintiff supplied the goods by five invoices as stated herein above.

6 The learned Counsel for the defendant submits that M/s.Glint Conception made the payment of first invoice i.e. invoice no. 00041 dated 18.06.2009 of Rs. 1,41,118/- In support of his contentions, the learned Counsel for the defendant relies on the ledger account for the period of 01.01.2008 to 31.03.2010. He submits that the plaintiff received sum of Rs.1,41,118/- from M/s.Glint Conception directly. He further submits that the Trial Court failed to appreciate that the defendants have not liable to make any payment to the plaintiff. Therefore, they should not have made party to the suit. He further submits that the Trial Court directed defendant to deposit the entire amount of both the invoices, though the same were disputed by them. He submits that the Apex Court in the matter of ***Santosh kumar V/s. Mool Singh reported in AIR 1958 Supreme Court page 321*** held that the defendant can prove his case, during the course of trial and that time only Court can direct to deposit the entire amount. He particularly relies on paragraphs 12 and 13 of the said Judgment.

7 The learned Counsel for the defendant also relies on the Judgment of the Apex Court in the matter of ***M/s. Mechelec Engineers and Manufactures V/s. Basic Equipment Corporation reported in (1976)4 Supreme Court Cases 687***. He submits that the Apex Court in the said authority held that when the defence raises “triable issue”, leave must be given and when that is the case it must be given

unconditional leave to defend. The learned Counsel for the defendant mainly relies on paragraph 8 of the said Judgment.

8 On the basis of this submission and law declared by the Apex Court, the learned Counsel for the defendant submits that the impugned order passed by the Trial Court dated 13.11.2014 granting conditional leave to the defendant to defend summary suit no. 565 of 2013 filed by the plaintiff requires to be set aside.

9 On the other hand, the learned Counsel Mr. Furia appearing on behalf of plaintiff vehemently opposed the present Appeal from Order. He submits that both the invoices i.e. invoice no. 00144 and invoice no.00005 were issued in the name of defendant. Even the material was accepted by the defendant by putting his rubber stamp and signature. He submits that the Delhi High Court judgment in the matter of *M/s. KIG Systel Ltd. V/s. M/s. Fujitsu ICIM reported in AIR 2001 DELHI 357*, held that invoices/bills are 'written contracts'.

10 The learned Counsel for the plaintiff further submits that the Trial Court has considered all these facts and directed defendant to deposit invoice amount of Rs.4,41,382/-. He further submits that in any case, summary suit is pending for hearing and final disposal on its own merits. If, defendant is able to satisfy that there was no contract between plaintiff and defendant, then he can get refund of his amount. On the basis of these submissions, the learned Counsel for the plaintiff submits that there is no substance in the present Appeal from Order and same to be dismissed with costs.

11 I heard both the sides at length. It is to be noted that in the present proceeding the Trial Court on the basis of two invoices granted conditional leave to defendant to defend the summary suit. Bare reading of the two invoices show that the same were issued in the name of defendant and same were accepted by the defendant by putting their rubber stamp and signature. Prima facie it shows that there was transaction between plaintiff and defendant only. It is to be noted that though the defendant had vehemently argued that there was contract between M/s. Glinth Conception and him for carrying out construction and as per quotation dated 29.01.2009, the entire responsibility to pay the amount was on M/s. Glinth Conception, the same was not proved by the defendant. It is to be noted that when plaintiff issued legal notice to the defendant calling upon them to make the payment of unpaid invoices, the same was not replied by them. In any case, the authorities cited by the defendant are not applicable in the facts and circumstances of the present case. Actually, it can say that in the matter of M/s. Mechelec Engineers & Manufactures (Supra) the Apex Court held that High Court should not interfere with the exercise of the discretion of the subordinate court in granting unconditional leave under order 37 Rule 3 of the C.P.C. In any case the summary suit is pending. The defendant can lead his evidence about his case.

12 On the basis of above mentioned facts and circumstance of the present case, I do not find any substance in the Appeal from Order and same is rejected.

13 In view of rejection of the Appeal from Order, nothing survives in the Civil Application. Hence, same is dismissed as infructuous.

14 At the request of learned Counsel for the defendant, two weeks time from today is granted them to comply the order dated 13.11.2014 passed by the Trial Court in summons for judgment.

(K.K.TATED, J.)