

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

WRIT PETITION STAMP NO.34206 OF 2014

Indira Gandhi Mahila Sahakari Soot

Girani Limited

: Petitioner

versus

Art Yarn Export (India) Private Ltd.

: Respondent.

Mr. M S Karnik i/by Mr. Prashant P Kulkarni for the Petitioner.

Mr. Ankit Lohia with Mr. Hardik Sanghavi i/by M/s. Agrud Partners for the Respondent.

CORAM : R. M. SAVANT, J.

DATE : 07th January 2015

P.C.

1 The writ jurisdiction of this court is invoked against the order dated 21/11/2014 passed by the learned Judge of City Civil Court, Greater Bombay by which order the Petitioner has been granted conditional leave to defend the suit subject to deposit of Rs.66,65,198/- in the Trial Court.

2 The suit in question has been filed by the Respondent herein for recovery of the amount of Rs.66,65,198/- which is admittedly the amount paid by the Plaintiff to the Defendant pursuant to the purchase order dated 9/9/2011. The cause for filing the suit was that inspite of the payment of the entire amount, the goods i.e. the yarn which was to be supplied by the Defendant, was not supplied to the Plaintiff.

3 In the said suit the Plaintiff filed a Summons for Judgment. The Defendant took up four defences. The first defence was as regards territorial jurisdiction of the City Civil Court to try the suit. The second defence was as regards non-issuance of the notice under Section 164 of the Maharashtra Co-operative Societies Act in view of the fact that the Defendant is a Co-operative Society registered under the Maharashtra Co-operative Societies Act. The third defence was that an amount of Rs.Forty Two lacs which was payable to the Defendant by the Plaintiff pursuant to the earlier purchase order of April 2011 was to be adjusted and the last defence was that the interest which was claimed was not provided for in the contract.

4 On behalf of the Defendant much store was laid on the factum of adjustment of the amount which was payable by the Plaintiff pursuant to the earlier purchase order i.e. the purchase order of April 2011. However, the Trial Court held the said defence to be moonshine in the light of the fact that the Defendant had not placed any material on record in support of its case that repeated reminders were sent to the Plaintiff to take delivery of the goods. The Trial Court also found it curious that though an amount of Rs.Forty Two lacs was due from the Plaintiff, the Defendant had kept quite and raised the said defence only when the Plaintiff has filed the suit claiming recovery of the amount of Rs.66,65,198/-. Hence the said defence was found to be moonshine by the Trial Court. In so far as the aspect of territorial jurisdiction is

concerned, the learned counsel for the Respondent herein i.e. the original Plaintiff draws my attention to the purchase order, especially clause 13 thereof, wherein the parties have agreed to the jurisdiction of the Mumbai Court, hence there is no substance in the said defence also. In so far as the last two defences are concerned, the Trial Court held that triable issues have been raised on account of the said two defences. However, it seems that the Trial Court having regard to the proviso to clause 5 of Rule 3 of Order XXXVII of the Code of Civil Procedure deemed it appropriate to direct the Defendant to deposit the amount of Rs.66,65,198/-. This was on the basis that the main defence as regards adjustment raised by the Defendant was found to be moonshine by the Trial Court as there was absolutely no material placed on record by the Defendant in support of its case of adjustment. The Trial Court was therefore well within its rights in terms of the said proviso to direct the Defendant to deposit the said amount.

5 In the light of the aforesaid, there is no error of jurisdiction or any other illegality or infirmity in the order passed by the Trial Court for this Court to interdict in its writ jurisdiction under Article 227 of the Constitution of India. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]