

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.230 OF 2016

Bajaj Auto Limited .. Applicant

vs.

Shreeram Motors Private Limited & Ors. .. Respondents

Dr.Birendra Saraf i/b M/s.Dhru & Co. for the applicant

Mr.Anoshak Daver i/b Mr.Rahul Karnik for the respondent nos.1 to 3

CORAM : K. K. TATED, J.
DATE : JULY 1, 2016

PC.:

1 Heard the learned counsel for the parties.

2 By this Civil Revision Application, applicant org. plaintiff challenges the order dated 10.2.2016 passed by 2nd Joint Civil Judge, Senior Division, Pune below Exhibit-14 in Special Summary Suit No. 38 of 2015 granting leave to the respondent defendant to defend the Summary Suit to the extent of dumping of stock by the plaintiff company without demand of the defendant.

3 The plaintiff and defendant no.1 is a Company incorporated under the Company's Act, 1956. Defendant nos.2 and 3 are the

directors of defendant no.1. The plaintiff Company by their appointment letters dated 4.3.2009, 28.6.2005 and 1.3.2013 appointed defendants as a dealer for plaintiff's vehicles being Motor Range and spare parts thereto on principal to principal basis. As there was sum of Rs.3,99,93,360/- due and payable by the defendant company, the plaintiff filed Special Summary Suit No.38 of 2015 in the court of Civil Judge, Senior Division, Pune. In that Summary Suit, the defendants preferred application below Exhibit 14 under Order XXXVII Rule 3 of the Civil Procedure Code, 1908 for unconditional leave to defend the Suit and allow them to file the written statement. The same was opposed by the plaintiff by filing reply. The Trial Court by impugned order dated 10.2.2016 granted leave only to the extent of dumping of stock by the plaintiff, to defend the Suit. Hence, the present Civil Revision Application.

4 The learned counsel for the plaintiff submits that the Trial Court erred in coming to the conclusion that defendants were not liable to deposit amount claimed by the plaintiff in Summary Suit to defend the same. He submits that in the present proceedings, plaintiff supplied vehicles and its spare parts to the defendant on principal to principal basis from time to time. Initially the defendant made part payment of the same. As there was arrears, plaintiff called upon the defendant to clear the same. Therefore, at the request of defendant, plaintiff held joint meeting on 22.11.2014 at Pune in which defendants' representatives Mr.Ajay Wasan and Mr.Suresh Tekchandani were present. After discussing in detail, defendant agreed to pay the outstanding amount of Rs.3,99,93,360/-. Both the parties entered into

minutes dated 22.11.2014, clause 4 of the said minutes reads thus:

“4e. The following schedule is confirmed for repayment to BAL irrespective of 4(a), 4(b), 4(c) and 4(d). The payments indicated below shall be made on or before the dates indicated.

i.	30 Dec 2014	Rs.50 lakhs
ii.	31 Jan 2015	Rs.50 lakhs
iii.	28 Feb 2015	Rs.50 lakhs”

5 The learned counsel for the plaintiff submits that plaintiff as well as defendant signed those minutes. In spite of admitting the liability to the extent of Rs.3,99,93,360/- defendant failed and neglected to clear the same. Hence, plaintiff issue legal notice dated 30.1.2015 to the defendants calling upon them to clear the outstanding with interest @ 18% p.a. That legal notice replied by the defendants by letter dated 28.2.2015. In that reply, the defendants raised several objections and stated that Director of defendant no.1 Mr.Ajay S.Wasan was not keeping well. Therefore, it is very difficult for them to clear the outstanding. In that reply, they also raised objection about signing of minutes of the meeting dated 22.12.2014. As the defendants failed and neglected to clear their admitted liability plaintiff filed Special Summary Suit No.38 of 2015 in the court of Civil Judge, Senior Division, Pune. The Trial Court at the time of deciding application below Exhibit 14, allowed defendant's application, particularly without asking them to deposit the dues as per minutes of meeting dated 22.11.2014. He submits that the Trial Court failed to consider the fact that though the goods were supplied by the plaintiff to the defendant from time to time they never raised any objection about the same.

Only at the time of replying legal notice, the defendant raised objection about the dumping of goods without their consent. He submits that though the defendant raised these objections in their letter dated 28.2.2015 and application under Order XXXVII Rule 3 of the Civil Procedure Code, 1908 seeking unconditional leave, they never placed on record these facts along with documentary proof. Not only that those Motor Range and spare parts were sold by the defendant in market. These facts were not considered by the Trial Court at the time of passing the impugned order dated 10.2.2016. Hence, this Hon'ble Court be pleased to direct the defendant to deposit admitted sum of Rs.3,29,90,268- in Trial Court to defend the suit on its own merits.

6 On the other hand, the learned counsel for the defendant vehemently opposed the present Civil Revision Application. He submits that the Trial Court rightly considered the fact that plaintiff without any order dumped their vehicles and spare parts with the defendant just to fulfill their target. He submits that from time and again the defendant informed the plaintiff that one of their directors is not keeping well and therefore, it is not possible for them to take active part in the business to sell the plaintiffs vehicles and spare parts. He submits that in spite of having knowledge about the inability of one of the director of the defendant, plaintiff sent their vehicles and spare parts to the defendant and because of that defendant suffered huge loss. He further submits that even in meeting dated 22.11.2015 plaintiff fraudulently obtained their signature showing that the defendant agreed to clear their outstanding within stipulated time. He submits that the defendants are disputing signing on those minutes dated 22.11.2014. He submits all

these facts were considered by the Trial Court and passed impugned order dated 10.2.2016. Therefore, there is no question of interfering with the well reasoned order passed by Trial Court. On the basis of these submissions, the learned counsel for the defendant submits that there is no substance in the present Civil Revision Application and same is required to be dismissed with costs.

7 The issue involved in the present Civil Revision Application is whether the defendant is required to deposit amount to contest the Summary Suit on its own merits. It is to be noted that plaintiff appointed defendant as a dealer to deal in vehicles and spare parts thereof on principal to principal basis. In appointment letter dated 1.3.2013, the main terms between the parties were as under:

“B) The relationship between the company and you will be on a principal – to – principal basis and not in a principal and agent.

U) In the event of discontinuance or termination of your dealership for any reason whatsoever, all the registers, post office passbooks / fixed deposit receipts of scheduled banks and other relevant documents connected with the booking, sale and servicing of our vehicles, whether maintained in sale and servicing of our vehicles, whether maintained in physical or electronic mode will be handed over to us forthwith after receipt of communication of such termination or discontinuation of dealership.

V) This letter of appointment as dealer is issued at Pune and your appointment as dealer will be effective only after receipt of your confirmation by us at Pune, any dispute arising out of or incidental to this appointment letter and terms and conditions mentioned herein shall be subject to jurisdiction of the Court of City of Pune (Maharashtra) only.”

8 These terms clearly shows that the transaction between plaintiff and defendant was on the basis of principal to principal and not as a principal and agent. Though the goods were supplied by the plaintiff to defendant, defendant failed to place on record single document to show that they raised objection for supplying those goods. Apart from that the defendant sold those goods in open market and failed and neglected to pay the plaintiff's dues. The defendant in a meeting dated 20.11.2014 signed the minutes and agreed to repay sum of Rs.3,99,93,360 with interest in instalment. As per minutes, the defendant agreed to repay the amount as follows:

- a) Rs.50.0 lacs on or before 30.12.2014.
- b) Rs.50.0 lacs on or before 31.01.2015.
- c) Rs.50.0 lacs on or before 28.02.2015.
- d) Balance amount including interest by 15.3.2015.

9 In spite of admitting the liability defendant failed and neglected to clear the same. Though the Trial Court considered some of the documents on record but failed to consider the minutes of meeting dated 22.11.2014 in which the defendants specifically admitted their liability. Whether goods were supplied by the plaintiff as per their own wish, to complete their internal target or at the request of defendant, is required to be decided after considering the evidence on record of both the parties. But admittedly the defendant executed the minutes dated 22.11.2014 and admitted their liability.

10 Considering these facts, I am of the opinion that defendant is

required to deposit atleast 50% of admitted claim i.e. Rs.3,99,93,360/- in Trial Court to defend the Summary Suit on its own merits. Hence, following order is passed:

- a) Civil Revision Application is partly allowed.
- b) Impugned order dated 10.2.2016 passed by 2nd Joint Civil Judge, Senior Division, Pune below Exhibit 14 in Special Summary Suit No.38 of 2015 is set aside.
- c) Defendants are directed to deposit 50% of admitted amount as per minutes dated 22.11.2014 i.e. Rs.1,99,96,680/- in Trial Court within 8 weeks from today.
- c) If amount is deposited within stipulated time as stated hereinabove Trial Court is directed to invest the said amount in fixed deposit of any nationalised bank initially for a period of 1 year and to continue the same till the hearing and final disposal of Special Summary Suit No.38 of 2015.
- d) If the defendant failed to comply this order i.e. to deposit the amount in Trial Court within stipulated time as stated hereinabove plaintiff is entitled to take out appropriate proceeding for further orders.
- e) Hearing of Special Summary Suit No.38 of 2015 is expedited.

f) No order as to costs.

JUDGE