

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

WRIT PETITION (ST) NO.9438 OF 2016

Siddhi Electronics

.. Petitioner

vs.

IFM Electronic GmbH

.. Respondent

Mr.Piyush M. Shah with Mr.N.M.Dedhia and Ms.Jigna Shah for the petitioner

Mr.Yatin R. Shah with Ms.Aditi Bhat for the respondent

CORAM : K. K. TATED, J.

DATE : JULY 25, 2016

PC.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India the Petitioner original defendant challenges the order dated 20.2.2016 passed by Bombay City Civil Court, Mumbai in Summons for Judgment No.110 of 2013 in Summary Suit No.5107 of 2012 granting conditional leave to the defendant to defend the Summary Suit on depositing sum of Rs.31,50,000/- in court within one month from the date of order.

3 In the present proceeding, the respondent plaintiff placed orders on defendant for supply of goods on 24.9.2010. Thereafter plaintiff paid advance amount of Rs.55,50,000/- to the defendant. As the

defendant failed to comply with the terms and conditions of the Contract dated 24.9.2010, plaintiff cancelled the said contract. Hence, the defendant refunded the sum of Rs.24 lacs on 4.10.2010. As the defendant failed and neglected to pay the remaining amount, plaintiff filed Summary Suit for remaining amount of Rs.31,50,000/-. The Trial Court passed impugned order dated 20.2.2016 granting conditional leave to the defendant to defend the Summary Suit on deposit of Rs.31,50,000/- in the court within one month. Hence, the present Writ Petition.

4 The learned counsel for the petitioner original defendant submits that the Trial Court erred in coming to the conclusion that the defendant have to deposit sum of Rs.31,50,000/- for defending the Summary Suit. He submits that the plaint as it is, filed by the plaintiff before the Trial Court is not maintainable. He submits that the plaintiff Company is based in Germany whereas one Mr.Vishwas Udpikar signed and verified the plaint. He submits that the plaint was signed by Managing Director of IFM Engineering P. Ltd. He submits that there was no contract between IFM Engineering P. Ltd. and the defendant. These facts were not considered by the Trial Court at the time of passing the order. He submits that at one place in affirmation said Vishwas Udpikar signed as Managing Director of IFM Engineering P. Ltd. and on the other place he signed as Constituted Attorney of the plaintiff. These facts were not considered by the Trial Court at the time of passing impugned order. He submits that Trial Court has not considered the point of Jurisdiction also. Hence, impugned order is required to be set aside.

5 It is to be noted that in the present proceeding, pursuant to

contract dated 24.9.2010 plaintiff advance sum of Rs.55,50,000/- to the defendant to supply the goods. As the defendant failed to supply the goods, said contract was terminated by the plaintiff. On termination, initially, defendant refunded sum of Rs.24.0 lacs. Thereafter there were some emails between the parties for supply of some other goods but that did not materialise. Hence, plaintiff called upon the defendant to repay the remaining amount of Rs.31,50,000/-. Same was objected by the defendant. Hence, plaintiff filed the Summary Suit.

6 The objection raised by the defendant about Jurisdiction is considered by the Trial Court in view of the section 20 of the Code of Civil Procedure, 1908. The question about affirmation of the plaint by one Mr.Vishwas Udpikar is required to be decided at the time of final hearing after recording of evidence of both the parties. Admittedly, on facts and circumstances of the present case, sum of Rs.31,50,000/- is lying with the defendant.

7 Considering these facts, I do not find any substance in the present Writ Petition. Hence, same stands rejected.

JUDGE