

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

***WRIT PETITION NO. 8608 OF 2016***

1. Biltude Industries Ltd.,  
Regd. Office at 1102, 11<sup>th</sup> flr.,  
Sai Capital Bldg., Senapati Bapat Road,  
Pune – 411 016.

2. Kiran Bhandari,  
R/at Mantri Lawns C.H.S., C-Wing,  
Flat No.605, A-B Anand Park,  
Aundh, Pune – 411 007.

... Petitioners

v/s

DEG Deutsche Investitions and  
Entwicklungsgesellschaft mbH,  
Regd. Office at Kaemmergasse,  
22 50676, Koeln Germany,  
through its Power of Attorney holder  
Mr.Padmanabhan Nair

... Respondent

Mr.Jaydeep Deo for the petitioners.

Mr.Suraj Iyer along with M. Fernandes i/by Ganesh & Co. for the  
respondent.

***Coram: N.M. Jamdar, J.***

***Dated: 19 September 2016***

***ORAL ORDER:***

The Petitioners challenge the orders passed by the learned Civil

Judge, Senior Division, Pune, dated 8 November 2014 and 17 February 2016, below Exh. Nos.1 and 42, in Summary Suit No.107 of 2013.

2 The Respondent/Plaintiff filed a Summary Suit against the Petitioners in the Court of Civil Judge, Senior Division, Pune, seeking recovery of an amount of ₹9,75,61,665.93. The case of the Plaintiff is that, the Petitioners had stood guarantors to the loan advanced. The suit was filed on 3 October 2013. An application for leave to defend was taken out by the Petitioner on 13 January 2014 in which an order was passed on 16 September 2014 granting an unconditional leave to the Petitioners and the Petitioners were directed to file written statement within one month. On 8 November 2014, the Petitioners gave notice to the Respondent for production of certain documents. On that day, an order came to be passed by the learned Civil Judge that suit to proceed since the Petitioner had not complied with the order of filing written statement. The application taken out by the Petitioners directing the Respondent/Plaintiff to produce documents was rejected by an order dated 17 June 2015. Thereafter an application was taken out by the Petitioners for filing written statement on 1 September 2015, which was rejected by the learned Civil Judge by the impugned order dated 17 February 2016.

3 Considering the object of the legislature in providing summary remedy for suits based on financial instruments, the question of delay

in filing the written statement in such cases has to be strictly construed. The Defendant can choose to file written statement any time the Defendant feels appropriate. In the present case, when an order was passed on 16 September 2014, directing the Petitioners to file the written statement within one month, the Petitioners were fully aware of the stipulation. For grant of unconditional leave to defend, the only reason given by the learned Civil Judge was that the Respondent/Plaintiff had not produced certain documents. Therefore, that the written statement will have to be filed without these documents was clear to the Petitioners. The Petitioners took advantage of the order passed on the factual premises that all the documents were not produced on record and, therefore, cannot complain that the other part of the order that is to file written statement within one month was not practically possible.

4 The application made for production of documents was rejected by the learned Civil Judge. Thereafter present application was filed. The reason given in the application was that, since the documents have been produced during evidence, the written statement can be filed now and be taken on record. As stated earlier, the Petitioners accepted the position on 16 September 2014 that the written statement will have to be filed without all the documents and there is absolutely no explanation why the Petitioners moved an application for filing the written statement after a period of one year. If it was not practically possible to file the written statement within

one month, the Petitioners could have challenged the stipulation. Even otherwise, as contended by the learned counsel for the Respondents, the suit is based on a guarantee, which document was on record.

5     Considering this position, it appears that the only intention of the Petitioners is to delay the proceedings and delay the repayment as sought for by the Respondent/Plaintiff. The Petitioners cannot approbate and reprobate in respect of the order dated 16 September 2014. The contention of the learned counsel for the Petitioners that these two parts of the order are severable, cannot be accepted in view of what is discussed above.

6     The matter was twice adjourned for the Petitioner to take instructions, whether the Petitioners are agreeable to restore the proceedings to the grant of leave to defend since the reason given for not filing the written statement in time is non-supply of documents by the Respondent/Plaintiff. It was indicated that the Petitioners had accepted the time limit of one month knowing fully well that there are no documents, complete justice could be done if the suit would be relegated to the stage of grant of leave to be considered on the document so produced. Learned counsel for the Petitioners, on instructions, states that the Petitioners are not agreeable to this course of action. Therefore, the enquiry left to be considered in this petition is whether the order passed by the learned civil Judge suffers from any

jurisdictional error or is perverse.

7 In the circumstances, there is no error in the exercise of discretion by the learned Civil Judge in passing the impugned order. The writ petition is accordingly rejected.

8 Learned counsel for the Petitioners seeks stay of the proceedings in the suit for a period of eight weeks. The request, in the light of what is observed above, and the conduct of the Petitioners, cannot be granted. In any case, the timetable of the suit indicates that it will not be disposed of within a period of eight weeks from today.

*(N. M. Jamdar, J.)*