IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6385 OF 2014

Mr. Santosh Krishna Patil ..Petitioner.

Vs

1. ACG Pam Pac Machines Pvt Ltd and Ors. .. Respondents

Mr.T.D.Deshmukh, Advocate for Petitioner.
Mr. R.V.Govilkar i/b Mihir R. Govilkar, Advocate for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 06/12/2016

PC:

1. Heard Mr. T.D.Deshmukh, learned counsel for the petitioner and Mr. R.V.Govilkar, learned counsel for the respondents at length. Rule. Mr. Govilkar waives service on behalf of the respondents. Having regard to the narrow controversy as also at the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff', has challenged the Judgment and order dated 28.2.2014 passed by the learned 4th jt. Civil Judge, Sr Dn., Pune below Exhibit 19 in Spl. Summary Suit No. 46 of 2013. By that order, the learned trial Judge granted unconditional leave to the defendants to defend the suit.

3. In support of this petition, Mr. Deshmukh has taken me through :

(i) Contract dated 1.12.2009 and in particular clause 9 thereof;

(ii) Forms No. 16A dated 30.4.2010 and 1.5.2011 submitted by the defendants indicating deduction of TDS.

He submitted that the plaintiff is engaged in consultancy services. The plaintiff and defendant no.1 entered into contract on 1.12.2009. Duration of contract was for a period of six months from 1.12.2009 to 31.5.2010. He invited my attention to Form No.16A dated 30.4.2010. At Sr.Nos 1,2,4 and 5, TDS at the rate of Rs.7500/- was deducted in respect of amount of Rs.75,000/- each at sr.no. 1,2,4 and 5. At sr.no.6, TDS of Rs. 45000/- was deducted towards amount of Rs.4,50,000/-. By Form no.16A dated 1.5.2011 the defendant deducted 7500/- tax each towards the amount of Rs. 75,000/- each. In other words, defendant deducted TDS on six occasions in respect of Rs. 75,000/- each and also deducted TDS of Rs.45000/- towards the amount of Rs.4,50,000/-. This conclusively shows that the defendants have deducted tax on the basis that they are liable to pay Rs. 9 lakhs in all to the plaintiff. The learned trial Judge, however, did not consider this aspect and merely considered clause 9 of the agreement.

4. On the other hand, Mr. Govilkar supported the impugned

order. He has taken me through the written statement filed on behalf of the defendants and in particular paragraph 14 thereof. The defendants have set up counter claim from paragraph 14 onwards. In particular, he submitted that in anticipation of the plaintiff making compliance of all the obligations as also in order to have timely tax compliance on the part of defendant no.1 in good faith, defendant no.1 deposited TDS and therefore issued TDS certificates. He submitted that this was a mistake on the part of the defendant in deducting T.D.S. In respect of amount of Rs. 4,50,000/-. He submitted that the plaintiff is entitled to only Rs.4,50,000/- having regard to the fact that the contract was for a duration of six months and the defendants are liable to pay Rs.75000/- per month. The defendants have in fact paid Rs. 4,65,773/- and thus the plaintiff has received Rs. 10,773/- in excess.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Perusal of paragraphs 4 and 6 of the impugned shows that the learned trial Judge has reproduced clause 9 of the agreement. In paragraph 6, the learned trial Judge observed that there is scope of interpretation and there is plausible or good defence to the defendants. The learned trial Judge, however, did not advert to Forms No.16A indicating deduction of tax by the defendants. As the learned trial Judge

has ignored this aspect, the impugned order cannot be sustained and as such is liable to be set aside thereby restoring the application Exhibit-19 filed by the defendants for leave to defend. Hence following order.

6. Impugned order dated 28.2.2014 is set aside. Application filed by the defendant Exhibit-19 for leave to defend is restored to the file of the learned trial Judge. The learned trial Judge will consider the material on record and decide the application afresh. All contentions of the parties on merits are kept open. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)