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

WRIT PETITION NO. 8077 OF 2013

M/s Sheth Creators Pvt. Ltd.

...Petitioner

VS

M/s Mpower Business Facilitators Ltd.

...Respondent

.....

Mr Raj Patel i/b Viral Rathod for the Petitioner

Mr Suresh Barne for the Respondent.

.....

CORAM : N. M. JAMDAR, J.

26 OCTOBER, 2016

P.C. :

Heard learned counsel for parties. Considering the nature of controversy, the Petition is taken up for disposal forthwith by consent.

2 The Petitioner is a Defendant in Summary Suit No.790 of 2013 filed by the Respondent / Plaintiff. The suit has been filed for recovery of an amount of Rs.1,94,086/-. The summons was issued and served on the Petitioner. The Petitioner filed reply on 9 April 2013. When Summons for Judgment No.23 of 2013 came up for consideration, the learned City Civil Court Judge came to the conclusion that though reply is filed, in the reply specific prayer for grant of leave to defend was not made and since the leave was not

obtained as specified under Order 39 Rules 5 and 6 of the Code of Civil Procedure, the learned City Civil Court Judge proceeded to pass an order on the Summons for Judgment.

3 In this Petition, on 13 September 2013, notice was issued to the Respondent and interim relief was granted staying the suit which is continued till date.

4 Once the reply was filed to the Summons for Judgment, it was implicit that the Petitioner was contesting the Summons for Judgment and all that remained to be incorporated was a specific prayer for grant of leave to defend. Even though the reply may not be in a particular format, the learned City Civil Court Judge ought to have called upon the Petitioner to correct the defect. It appears, it has not been done. Learned City Civil Court Judge has himself noted that he is not impressed by the argument that the reply is maintainable and should not go into hyper technicalities. Learned counsel for the Petitioner submitted that the Petitioner was always ready and even ready today to amend the reply or file an additional reply stating that the reply filed in fact is seeking leave to defend. In the facts of the present case, the learned City Civil Court Judge ought to have permitted the Petitioner to amend the reply to incorporate prayer for grant of leave to defend and further delay in the proceedings could have been avoided. As the consequence, the suit has remained stayed for last three years.

5 In these circumstances, I am of the opinion that the Petitioner be permitted to amend the reply and incorporate a prayer for seeking leave to defend. Accordingly, the impugned order dated 30 July 2013 is quashed and set aside and the reply filed by the Petitioner stands restored to file. The Petitioner will carry out the amendment on or before 23 November 2016. Thereafter, the learned City Civil Court Judge will decide the Summons for Judgment on its own merits and pass appropriate orders as per law. It is made clear that I have not commented on merits of the rival contentions nor on the defence put up by the Petitioner. The Writ Petition is disposed of accordingly.

(*N.M.JAMDAR J.*)