

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

WRIT PETITION NO. 227 OF 2016

M/s.Excel Constructions Co.,
Office at Meghdoot Vallabh Baug Lane,
Ghatkopar (E), Mumbai – 400 077.

... Petitioner

v/s

M/s.K. Bhatia Developers,
Office at 1, May Queen 33rd Road,
Off Linking Road, Bandra (W),
Mumbai – 400 052.

... Respondent

Mr.V.A.Thorat, senior advocate along with Vaibhav Sugdare,
K.V.Thorat i/by L.D.Shah & Co. for the petitioner.

Mr.Y.S.Jahagirdar, senior advocate along with Nikunj Mehta and
Virendra Pereira i/by Divya Shah Asso. for the respondent.

Coram: N.M. Jamdar, J.

Dated: 1 SEPTEMBER 2016

ORAL ORDER:

Rule. Rule made returnable forthwith.

2 Respondent waives service. Taken up for final disposal by
consent of the parties.

3 Heard learned counsel for the parties.

4 The Petitioner challenges the order passed by the learned City Civil Court Judge, Mumbai, dated 22 March 2013, passed in Summons for Judgment No.270 of 2012 in Summary Suit No.3457 of 2012.

5 The main contention advanced by the learned senior advocate for the Petitioner is that the order granting unconditional leave to defend to the Respondent was passed without hearing the petitioner. Learned senior advocate for the Respondent is not able to controvert the position that unconditional leave to defend to the Respondent was granted without hearing the Petitioner.

6 Considering the nature of the order that is passed, the Petitioner ought to have been heard before granting unconditional leave to defend to the Respondent. Grant of unconditional leave is not a matter of course. This being the limited issue involved in the present petition and that there is no dispute that the petitioner was not heard while passing the impugned order, the writ petition deserves to be allowed by quashing and setting aside the impugned order and restoring the summons for judgment No.270 of 2012. The learned City Civil Court Judge will consider the question of granting leave to defend to the Respondent after hearing both sides.

7 Accordingly, the writ petition is allowed in terms of prayer clause (a).

8 The Summons for Judgment No.270 of 2012 stands restored to the file to be disposed of as per law by the learned City Civil Court Judge.

9 It is clarified that the impugned order is set aside only on the ground that principles of natural justice having not been followed and I have not considered the merits of the dispute which is kept open to be decided by the learned City Civil Court Judge.

(N. M. Jamdar, J.)