

of the contractor by Mumbai Metro Rail Project and the defendants wanted the plaintiffs to supply ready mix supply for which various purchase orders were placed from time to time. Based on invoices the plaintiffs sent a balance confirmation dated 1.4.2014 for confirmation of account for the period 1.4.2013 to 31.3.2014. The defendants have acknowledged the confirmation of account that balance of Rs.1,25,19,284/- which is the principal amount claimed in the suit is payable as on 31.3.2014. The plaintiffs have also annexed a copy of e-mail dated 20.3.2015 from the defendants in which the defendants have acknowledged the liability and assured that they will receive the payments in 4 to 5 installments and the first installment will be made in the 2nd week of April-2015. The defendants have also stated in the said e-mail that they will inform the plaintiffs when the other installments will be made after releasing the first installment in 3rd week of April-2015. As the defendants did not release the first installment, the plaintiffs by an e-mail dated 16.4.2015 reminded the defendants about the payment. As there was no response, the plaintiffs issued through their Advocate a notice dated 30.7.2015 claiming sum of Rs.1,25,19,284/- with interest @ 18% p.a. The plaintiffs have also annexed copy of the acknowledgment of receipt of that letter. The defendants did not response to the said letter. In fact, the plaintiffs' advocate has sent a reminder dated 4.9.2015 which also has been received but no reply was sent.

4 The defendants have filed an affidavit in reply. They have simply stated that the e-mail as attached is not bonafide and the ledger account also does not show complete, true or bonafide details. It is required to be noted that the person who has affirmed the affidavit, from the signature appears to be of the same person who has acknowledged the liability in the statement of account. It should also be noted that in the affidavit in reply the defendants have not denied that they signed the acknowledgement of liability or even put the rubber stamp. The other defence raised is, this court has no jurisdiction. But considering the averments in paragraph-11 of the plaint and the fact that the defendants have not denied that they have an office within this jurisdiction and supply of material was made within this jurisdiction, the jurisdiction issue also does not arise. The defendants thereafter, have baldly stated that triable issues are involved. In my view, no case for any leave to defend has been made out by the defendants.

5 The Apex Court in *M/s. Mechelec Engineers & Manufactures vs. M/s. Basic Equipment Corporation*¹ in paragraph 8 has stated as under :-

“8. In Smt. Kiranmoyee Dassi v. Dr. J. Chatterjee, Das J., after a comprehensive review of authorities on the subject, stated the principles applicable to cases covered by Order 17 CPC in the form of

1. (1976) 4 SCC 687

the following propositions :

(a) If the defendant satisfies the court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security.

(d) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence."

6 In view of the above, in my view, the defences being raised are nothing but after thought to defeat the genuine claim of the plaintiffs. Notwithstanding the above, I would still grant the defendants a chance to defend the suit on the condition that the defendants deposit, within six weeks from today, a sum of Rs.1,25,19,284/- with the Prothonotary & Senior Master.

12 If this amount is deposited then the defendants will be

permitted to defend the suit by filing written statement within two weeks after deposit of this amount. The prothonotary and Senior Master to invest the said amount in a fixed deposit in a nationalized bank for a minimum period of one year and renew year after year till final disposal of the suit. Two weeks after deposit, the defendants to file a written statement. Two weeks thereafter parties to file their respective affidavit of documents and also complete discovery and inspection. Within one week after completion of inspection, parties to file their respective statement of admission and denial with reasons for denial.

Suit be listed for issues after 12 weeks.

13 If the defendants do not deposit the amount within six weeks period granted above, suit be placed for directions immediately after six weeks period is over.

Summons for Judgment disposed accordingly.

(K.R.SHRIRAM,J)