

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2522 OF 2017

AVASH CHEMICALS PVT LTD.
VERSUS
DISAN AGROTECH PVT LTD DHULE AND OTHERS

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Advocate for Petitioner : Shri Bhandari Anand P.
Advocate for Respondents 1 to 5 : Shri Brahme Shailesh P.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 06, 2017
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PER COURT :-

1. The petitioner is aggrieved by the order dated 22.12.2016, by which, the trial Court has allowed application Exhibit 15 in Summary Suit No.3 of 2016 and has permitted defendant No.1 to defend himself in the Summary Suit without any conditions.

2. I have considered the submissions of the learned Advocates for the respective sides. Shri Brahme, learned Advocate has strenuously opposed this petition on behalf of the original defendants and has prayed for the dismissal of this petition with costs.

3. It is not in dispute that application Exhibit 15, filed by

defendant No.1 is under Order XXXVII Rules 3(5) and (6) of the Civil Procedure Code (CPC), which read as under:-

"3. *Procedure for the appearance of defendant.*

(1)

(2)

(3)

(4)

(5) *The defendant may, at any time within ten days from the service of such summons for judgement, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:*

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the

suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6) At the hearing of such summons for judgement,-

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgement forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgement forthwith."

4. It is settled law that when the trial Court considers an application for grant of leave to defend, it has to consider as to whether the grounds put forth by the defendant would indicate whether he has a good ground for defence. Based on a prima facie assessment, the trial Court has to decide as to what

conditions can be imposed upon the said defendant for permitting him to defend himself in the said suit. It is equally settled that if an application for defending himself under Order XXVII of the CPC is to be rejected or is to be allowed without conditions, strong reasons have to be assigned by the trial Court upon being convinced that the defendant has no case or a very strong case in defence has been put forth, as the case may be.

5. The impugned order does not indicate that the trial Court has considered the grounds put forth by defendant No.1. The impugned order also does not contain reasons for permitting defendant No.1 to defend himself without any conditions.

6. I find from the impugned order that it suffers from lack of application of mind and on account of lack of reasons. As noted above, if an unconditional right to defence is accorded to any of the defendants, the order must indicate the grounds and should also indicate as to why the trial Court finds that no conditions are required to be imposed.

7. Considering the above, this petition is partly allowed. The impugned order dated 22.12.2016 below Exhibit 15, is quashed and set aside. Exhibit 15 is restored in Summary Suit No.3 of

2016 for a rehearing. Since Exhibit 15 is being remitted, defendant No.1 may choose to file an affidavit supporting Exhibit 15, if not already filed, within two weeks from today. Needless to state, the trial Court shall consider Exhibit 15 on its own merits and in accordance with law and pass a reasoned order.

(RAVINDRA V. GHUGE, J.)

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