

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

WRIT PETITION NO. 3649 OF 2017

Electro-Care	...Petitioner
Versus	
M/s.Gajanan Enterprises & Anr.	...Respondents

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Mr.Rupesh M. Geete for the Petitioner.
 Mr.Anurag Mishra i/b. Mr.Adwait Bhonde for Respondent No.1.
 Mr.Sandeep M. Phatak for Respondent No.2.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED : JUNE 23, 2017**

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.

2. This petition is directed against the order dated 25.01.2017 passed by the learned 5th Joint Civil Judge, Senior Division, Pune in Special Summary Suit No. 62 of 2014 thereby allowing the application for leave to defend and directing that petitioner/ defendant no.1 shall file his written statement within a period of thirty days from 25.01.2017 and shall deposit Rs. 20 lakhs in the Court.

3. Respondent no.1/original plaintiff had filed Summary Suit under order XXXVII of the Code of Civil Procedure for recovery of money of Rs. 35,23,078/- The plaintiff was contacted by

defendant no.1/ petitioner, who was successful bidder in the tender of supplying gymnasium equipment to Pune Municipal Corporation. A contract was entered into between the parties for Rs. 35,23,078/-. The goods were delivered by respondent no.1/ plaintiff to defendant no.1/ petitioner and he has paid Rs. 15 lakhs as an advance. The trial Court has issued summons for judgment. Petitioner/defendant no.1 has filed an application for leave to defend. The said application was opposed by respondent no.1/plaintiff. The trial Court has granted conditional leave that defendant no.1 shall deposit Rs. 20 lakhs in the Court.

4. The learned counsel for the petitioner submits that he has good case on merits and therefore, the trial Court has granted conditional leave to defend. The trial Court has accepted that defendant no.1 has raised the issue of limitation. He further submits that the goods supplied by respondent no.1/plaintiff were not as per the requirement.

5. The learned counsel for respondent no.1 has submitted that he had filed the Suit in the year 2014 and the trial Court has passed the order on 25.01.2017 directing the petitioner to deposit an amount of Rs. 20 lakhs, which is not yet deposited. He has further submitted that as per the contract, the petitioner is

supposed to pay Rs. 35,23,078/- plus interest amount which is @ 24% and then the total amount goes approximately Rs. 29 lakhs. He has supported the order of the learned trial Judge. In support of this submission, he has relied on the judgment in **Southern Sales and Services and Ors. Vs. Sauermilch Design and Handels GMBH**, reported in **AIR 2009 SC 320**. He has further submitted that the learned counsel for petitioner/ defendant no.1 has admitted the contractual amount which goes upto Rs. 15 lakhs approximately and therefore, the order passed by the learned trial Judge directing him to deposit Rs. 20 lakhs is legal.

6. Perused the order passed by the learned trial Judge. Considered the submissions so also ratio laid down in **Southern Sales and Services and Ors.** (supra). The Supreme Court while dealing with the issue under 37 Rule (3) sub Rules (4), (5) and (6) of the Code of Civil Procedure of granting conditional leave to the defendant, observed that if the amount is admitted by the defendant to be due from him, then leave to defend the suit shall not be granted unless the said amount is deposited in the Court. A contract between the parties and the amount in the contract is not disputed. The delivery of the goods is also not disputed. In view of the ratio laid down in **Southern Sales and Services and Ors.** (supra), the order of the trial Court of granting

conditional leave needs to be interfered only to the extent of amount of deposit.

ORDER

(a) Writ Petition is partly allowed.

(b) The amount of Rs. 20 lakhs is reduced to Rs. 15 lakhs. The said amount is to be deposited by the petitioner as per following break up :

- (i) An amount of Rs. 10 lakhs is to be deposited within a period of three weeks from the date of this order.
- (ii) An amount of Rs. 5 lakhs is to be deposited within a period of two weeks from the date of this order.

7. The written statement of the petitioner/ defendant no.1 be taken on record by the trial Court after he produces a proof of depositing the said amount.

8. In view of the above, Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)