

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

WRIT PETITION NO. 4559 OF 2017

Gopalakrishnan Balakrishnan Nair	...Petitioner
Versus	
Asian Paints PPG Pvt. Ltd.	...Respondent

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Mr. Yogendra M. Kanchan for the Petitioner.
Mr. Chirag Mody a/w. Mr. Sangram S. Lotankar i/b. Prudentia
Advisory LLP for the Respondent.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 17, 2017**

P.C. :

1. Not on board. Upon mentioning, taken on board.
2. This petition filed under Article 227 of the Constitution of India is directed against the order dated 28th February 2017 passed by the learned Ad-hoc Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai in Summons for Judgment No. 62 of 2015 in Summary Suit No. 96 of 2015 thereby granting conditional leave to defend the suit subject to payment of Rs. 32,06,256/- within six weeks. The original plaintiff i.e. respondent is a supplier of paint from whom the petitioner i.e. original defendant has purchased paint powder on wholesale.

3. The learned counsel for the petitioner submits that the petitioner has not admitted the liability of the amount. He further submits that the learned Judge has observed that the defendant has a good case and therefore, leave to defend was granted. He further submits that once leave to defend is granted, the defendant is successful in showing the possibility of good defence. So there should have been the order of unconditional leave to defend.

4. The learned counsel for the respondents while making the submission relied on the letter dated 15th March 2013 below Exhibit-B. He has pointed out that the said letter was sent by the plaintiff to the defendant requesting him to confirm the due of Rs. 40,93,922.47/- He has further pointed out that at the footnote of the said letter the petitioner i.e. original defendant has confirmed the payment, but restricted to Rs. 36,31,776/- as on 15th March 2013. Thus the defendant has admitted the liability.

5. Perused the order, letter and the application for leave to defend. The learned Judge has referred to the impugned letter dated 15th March 2013 and so also the email dated 11th November 2013 sent by the defendant to the plaintiff whereby the defendant has

shown outstanding amount of Rs. 33,06,256/- The learned Judge has directed the petitioner/defendant to pay Rs. 32,06,256/- which is rightly calculated. Considering the above facts, I am of the view that there is no need to disturb the order dated 8th February 2017 passed by the learned Judge. The petitioner is directed to deposit the amount of Rs. 16,03,128/- within a period of two weeks from the date of this order and thereafter remaining amount of Rs. 16,03,128/- be deposited within a period of six weeks from the date of this order. Hence, the Writ Petition is thus dismissed with above order of breakup in payment.

(MRIDULA BHATKAR, J.)