

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

WRIT PETITION NO. 5661 of 2017

M/s.Satyanarayana (JV)

...Petitioner

Versus

Enrich Shreya Marine Infrastructure
Pvt. Ltd.

...Respondent

.....

Ms.Manjiri S.Parasnis for the Petitioner.

Mr.G.A.Patil a/w. Sapra Leena Dungarshi for the Respondent.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: AUGUST 03, 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 05.05.2017 passed by the learned Ad-hoc Judge, City Civil Court, Gr. Bombay, in Notice of Motion No. 1648 of 2017 in Summary Suit No. 1083 of 2017 in Summary Suit No. 612 of 2016 thereby refusing to modify a condition, which was imposed at the time of setting aside the ex-parte order dated 26.04.2017.
3. The respondent/original plaintiff has filed a Summary Suit No. 612 of 2016 for recovery of Rs.46,91,715/- and further interest at the rate of

Rs. 18% per annum on the principal amount of Rs. 35,00,000/- from the date of filing the Suit till its full realization. In the said Suit, the trial Court has passed the ex-parte order, as the petitioner/defendant did not appear. Thereafter, Notice of Motion No. 1083 of 2017 was taken out by the petitioner/defendant for setting aside the ex-parte order passed on 02.02.2017 and seeking permission to file Written Statement. After hearing the said Notice of Motion, the learned Judge has set aside the ex-parte order dated 02.02.2017 on a condition that the defendant shall deposit the principal amount of Rs. 35,00,000/- and shall pay the costs of Rs. 5000/- to the plaintiff within a period of four weeks from 26.04.2017. Consequently, the petitioner/defendant took out another Notice of Motion No. 1648 of 2017 and prayed that instead of depositing an amount of Rs. 35,00,000/- in the trial Court, he be permitted to give unconditional bank guarantee of Rs. 35,00,000/-. However, the said Notice of Motion was rejected, hence this Writ Petition.

4. The learned counsel for the petitioner has submitted that the petitioner be allowed to furnish unconditional bank guarantee of Rs. 35,00,000/-, which is the principal amount, as depositing an amount of Rs. 35,00,000/- in the Court is cumbersome. She has further submitted that the petitioner is ready to comply with the said order, if the petitioner be put to the terms of unconditional bank guarantee. She has

further submitted that the petitioner is ready to pay the costs of Rs. 5000/- to the respondent/plaintiff.

5. The learned counsel for the respondent opposed this Petition.

6. Considering the order passed by the learned Judge of the trial Court, I am of the view that if the petitioner/defendant is ready to give unconditional bank guarantee, then the said bank guarantee can be accepted to certain amount i.e. Rs. 25,00,000/- and he can be put to the terms of depositing cash of Rs. 10,00,000/- in the trial Court. Accordingly, I pass the following order:

ORDER

(1) Writ Petition is partly allowed.

(2) The petitioner is directed to deposit an amount of Rs.10,00,000/- by cash in the trial Court on or before 23.08.2017 and for the remaining amount of Rs. 25,00,000/- the petitioner is directed to furnish unconditional bank guarantee of any Nationalized Bank on or before 14.09.2017 from the date of this order. The costs of Rs. 5,000/- to be paid to the respondent on or before 09.08.2017.

(3) The trial Court to proceed with the matter and try to endeavour to finish the matter at the earliest.

(4) Parties to cooperate with the trial Court.

7. The petitioner to take note that no further extension shall be granted.

8. Writ Petition is partly allowed and disposed of accordingly.

(MRIDULA BHATKAR, J.)