

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 6039 OF 2017

Xylon Electrotechnic Pvt. Ltd.	... Petitioner
Vs.	
Vinisha Tharaney, Sole proprietor of M/s. Venus Power Electronics	... Respondent

Mr. Vishal Kanade with Shaikh Dhorajiwala a/w. Ms. Supriya Majumdar i/b. Vidhi Partners, Advocate for the petitioner.
Mr. Sachin Kudalkar i/b. Madekar & Co., Advocate for the respondent.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 27th June, 2017.

P.C.:

Rule. Rule made returnable forthwith. By consent, Writ Petition is heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the order dated 12th April, 2017 passed by the learned Ad-hoc Judge, City Civil Court, Greater Mumbai in Summons for Judgment No. 132 of 2013 in Summary Suit No. 3454 of 2011 thereby granting conditional leave to defend the suit, subject to deposit of sum of Rs.25 lakhs in the Court within 8 weeks from the date of order. The petitioner is a private limited company and defendant in the said Summary Suit. The petitioner is

a purchaser of electronic goods from the plaintiff/respondent. The order placed of the goods and the delivery was accepted by the petitioner/defendant in the year 2007-08 from the respondent/plaintiff, since then the price amount of the goods of Rs.17,30,521.51 is due and payable to the respondent/plaintiff by the petitioner/defendant. Therefore, the plaintiff filed the Summary Suit for the said principal amount and demanded interest @ 18%. Thus, the total amount claimed was Rs.26,58,823.51. The trial Court while granting conditional leave directed the petitioner/defendant to deposit entire amount. Hence, this Petition.

3. The learned counsel for the petitioner submitted that the petitioner is disputing the rate of interest so also his defence that the goods delivered were defective. He further submitted that the respondent/plaintiff has filed proceedings before the Company Board in Gujarat and in the said proceedings, the present petitioner has deposited Rs.5 lakhs as per the directions of the Company Board and thereafter the said proceedings were withdrawn by the respondent and a Civil Suit was filed in the City Civil Court. He further argued that the amount of Rs.5 lakhs was transferred from Company Board, Gujarat to City Civil Court, Mumbai and the said

amount is lying in the City Civil Court. He submitted that the trial Court ought to have considered that the petitioner/defendant has raised trivial issue and has a very good case.

4. The learned counsel for the respondent has submitted that the respondent is a plaintiff waiting for his dues since 2007-08. He submitted that the petitioner after receipt of the goods has never raised any issue and has not filed any proceeding before any Court in respect of the quality of goods. He further submitted that he has sent three notices at different time during this period and has explicitly made clear that as it was commercial transaction between the parties, he claimed interest @ 18% and it is justified. He supported the order passed by the learned trial Court.

5. Heard the submissions. There is no dispute in respect of delivery of the goods and no goods were returned by the petitioner/defendant to the respondent/plaintiff at any time before filing of the Summary Suit. There may be trivial issue in respect of rate of interest and the parties may raise and contest the same. So far as leave to defend is considered, I do not find any fault in the order passed by the learned trial Judge in granting conditional leave

to defend. However, the amount of Rs.25 lakhs is required to be reduced as follows:

- (i) Total principal amount of Rs.17,30,521.51 is to be deposited;
- (ii) It is agreed by both the parties that the amount of Rs.5 lakhs is already deposited in the City Civil Court, as it is transferred from Company Board, Gujarat. Hence, $\text{Rs.17,30,521.51} - \text{Rs.5,00,000/-} = \text{Rs.12,30,521.51}$. The remaining amount of Rs.12,30,521.51 is to be deposited within 8 weeks from today.
- (iii) The respondent/plaintiff may apply to the trial Court for withdrawal of amount of Rs.5,00,000/-;
- (iv) After depositing the amount, the petitioner can file Written Statement.

6. Writ Petition is disposed of on above terms.

(MRIDULA BHATKAR, J.)