

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT NAGPUR**

CIVIL REVISION APPLICATION NO. 4 OF 2017

1. M/s Haseeb Pharmaceuticals
Pvt.Ltd., having its registered
Office at F-9/15, M.I.D.C.,
Industrial Area, Hingna road,
Nagpur 440 016
2. Yusuf Safi Badar, r/o Mehendi
Bagh Colony, Dr. Ambedkar
Marg, Mehendi Bag,
Nagpur 440 017
3. Anand Premchand Bharut
r/o 139, Pratibha Mahal,
Nandanwan, Nagpur 440 009
4. Jyoti Shantaram Sule,
Plot no.8, Shree Apartments,
New Verma Layout,
Nagpur 440 010
5. Irshad Abde Musa Mehdi
r/o Mehendi Bagh colony,
Dr. Ambedkar Marg,
Nagpur 440 017

.. Applicants

Versus

- .
- M/s Sanghi Constructions,
c/o Chetna Metal, Main road,
Sitabuldi, Nagpur 12,
through its Proprietor
Mr Sanjay R. Sanghi

.. Respondent

Mr K.N. Shukul Advocate for applicants
Mr N.B. Kirtane, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 18th April 2017

PER COURT

Heard.

2. A summary suit No.110/2014 pursuant to the provisions of Order 37 of the Code of Civil Procedure (hereinafter referred to as 'Code' for brevity), for recovery of amount came to be initiated in

which an application Exh.25 raising a preliminary objection under Order 37, sub-rule 5 of Rule 3 of the Code came to be moved. Amongst other, the contentions are, the summary suit is not in tune with the provisions of Rule 1 of Order 37 of the Code, particularly clauses as are provided in sub-rule 2 of the Code.

3. In the said application, additional prayer is also made to grant permission to defend the suit. The said application came to be disposed of vide impugned order dated 11th August 2016 by the learned Civil Judge, Senior Division, Nagpur, as such present application.

4. While inviting attention of this Court to the provisions of sub-rule 2 of Rule 1 of Order 37 of the Code, Mr Shukul, learned Counsel for the applicants – original defendants would urge that the objection, as raised is not decided in its entirety. He would then urge that what is granted is the permission to defend the suit and not the findings on the issue of the very maintainability of the suit, when the same is tried under the provisions of Order 37 of the Code.

5. Per contra, learned Counsel for the non-applicant-original plaintiff would urge that once there is permission to defend the suit is granted in favour of present applicants-original defendants, the consequences will follow and the objection, as is raised will be dealt with by the said Court while deciding the suit on merit. According to him, the application lacks merits and it be rejected.

6. What could be gathered from the contents of the pleadings, particularly Exh.25 is a specific plea is raised by the defendants in the

said application stating that the suit is not qualifying the requirement of sub-rule 2 of Rule 1 of Order 37 of the Code, which deals with the process and the manner in which a summary suit is to be instituted and decided.

7. Upon perusal of the order impugned, the learned Judge though relied upon the judgment in the matter of ***Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation***, however, the issue as regards the very maintainability of the suit is at all not touched.

8. In view thereof, in my opinion, it will be appropriate to maintain the order passed below Exh.25 on 11th August 2016 permitting the present applicants – original defendants granting permission to defend the suit.

9. However, it will be worth to direct the learned Court below to decide the application, particularly prayer clause (1) of the said application granting opportunity of hearing to the respective parties without being influenced by what has been observed herein above or the earlier order passed by the Court granting permission to defend the suit.

10. With above observations, the present Civil Revision Application stands disposed of.

(N.W. SAMBRE, J.)