

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

WRIT PETITION st. NO.8805 OF 2017

The Yashwant Co-op. Processors,
Ichalkaranji & Ors. ... Petitioners

Vs.

Pravin Sakharam Lokare ... Respondent

**WITH
WRIT PETITION NO.5282 OF 2017**

The Yashwant Co-op. Processors,
Ichalkaranji & Ors. ... Petitioners

Vs.

M/s.Maruti Firewood Depo, Ichalkaranji ... Respondent

Mr.P.P. Kulkarni for the Petitioners

Mr.Prashant Bhavake for the Respondent

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JUNE 28, 2018

P.C. :

1. The petitioners are the defendants and the respondents are the original plaintiffs, in two summary suits filed by them, for recovery of money from the petitioners / original defendants. The plaintiffs are suppliers of firewood and the order was placed by the

petitioners with the respondents and it was supplied. However, the payment was due and, therefore, the two summary suits are filed by he respondents.

2. The learned Counsel for the petitioners/original defendants submits that the order passed by the learned Civil Judge, Senior Division, Ichalkaranji, granting conditional leave to defend is illegal and hence, the order of conditional leave to defend is to be set aside. The learned Counsel submits that whatever claim is made by the respondent of the due amounts, is false. The entire claim is based on fabricated and forged documents and that the said defence of the petitioners ought to have been considered by the trial Court while passing the order of conditional leave to defend. The learned Counsel further submitted that the petitioners have never confirmed the contract or agreement and have never accepted the due amounts.

3. In support of his submissions, the learned Counsel relied on the ratio laid down by the Full Bench in the case of **Jyotsna K. Valia vs. T.S. Parekh**¹. The learned Counsel has submitted that the test of the summary suit while granting leave to defend are laid

¹ 2007 (3) Bom.C.R. 772

down by the Full Bench. He submits that if a defendant satisfies the Court that he has good defence, then, the defendant is entitled to unconditional leave to defend. So also, if the defendant raises triable issues that he has fair and bonafide reasonable defence although not possibly good defence, the defendant is entitled to unconditional leave to defend. The learned Counsel submitted that the impugned order needs to be set aside.

4. The learned Counsel for the respondents / the original plaintiffs produced compilation of documents and pointed that on the letter dated 1.3.2013, sent by the respondents to the petitioners, the in-charge accountant of the petitioners has written a note and given acknowledgement of the credit balance of the suit amounts. He further submitted that the due amount is admitted by the petitioners and, therefore, conditional leave to defend is granted.

5. Heard submissions. Perused the orders and the relevant documents. The learned trial Judge has passed a very lengthy and elaborate order and has granted leave to defend on condition of furnishing security against the suit amount within one month from the date of the order. The said orders are passed on

2.3.2017.

6. In the case of **Jyotsna Valia (supra)**, the Full Bench while analysing the expression “implied terms of the contract” has finally held that it would necessarily depends on the facts of each case and it is not possible to lay down a general rule as to when an implied term in a contract can be the subject matter of the summary suit. While enumerating the tests, which were already laid down by the Supreme Court in various cases, it was held that if the defendants satisfy the Court that they have good defence and has triable issue and are fair and bonafide reasonable defence, then, unconditional leave to defend can be granted.

7. In the present case, the learned trial Judge has discussed all the facts and also documents before it. The plaintiffs have produced acceptance of the due amounts by way of acknowledgement. On the other hand, the defendants have denied the entire transactions and have claimed that all the documents produced by the plaintiffs are fabricated documents.

8. Considering the defence of the petitioners and also in view of the ratio laid down in **Jyotsna Valia (supra)**, the order passed by the trial Court of granting conditional leave cannot be faulted with

and, therefore, the impugned orders dated 2.3.2017 are hereby maintained and the defendants to furnish the security of the suit amounts till 31st July, 2018. The trial Court may expedite the suit and decide the same within one year from today.

9. Writ Petitions are disposed of accordingly.

(MRIDULA BHATKAR, J.)