

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2342 OF 2017

Minda Vast Access System Private Ltd.,]
(Formerly known as Minda Valeo Security]
Systems Private Limited),]
A Company registered and incorporated]
under the provisions of Companies Act, 1956]
and having its Registered Office and Factory]
at B-21, MIDC, Chakan at Nikhoje, Post Kuruli,]
Taluka Khed, District Pune - 410 501.] Petitioner

Versus

Rainbow Garnishers Private Limited,]
A Company registered and incorporated]
under the provisions of Companies Act, 1956]
and having its Registered Office and Factory at]
Gat No.141, Kuruli-Moi Road, Near Coca-Cola]
Logistic, Taluka Khed, District Pune - 410 501.] Respondent

Mr. Anoop U. Patil for the Petitioner.

Mr. Anand S. Shalgaonkar, a/w. Mr. Yogesh Dhore, for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 16TH APRIL, 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Patil, learned counsel for the Petitioner, and Mr. Shalgaonkar, learned counsel for the Respondent.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 7th December 2016 passed by the Joint Civil Judge, Senior Division, Khed-Rajgurunagar, below the application at “Exhibit-16” filed in Special Summary Suit No.2 of 2016.

3. The application at “Exhibit-16” was filed by the present Petitioner, who is Defendant before the Trial Court, seeking leave to defend the Suit.

4. Respondent-Plaintiff has filed the Special Summary Suit for recovery of the amount of Rs.37,33,586/- from the Petitioner-Defendant towards the price of the supplied products on the Invoices raised by the Plaintiff-Company. Petitioner has sought unconditional leave to defend the said Suit on the count that, the goods supplied were defective and hence, there are triable issues.

5. The Trial Court has, however, rejected the said application, holding that the Petitioner-Company has admitted the receipt of the goods and the Invoices raised by the Respondent-Company and in such situation, 'the presumption of acceptance of goods', under Section 42 of the Sale of Goods Act, is attracted. It was also further held that, if the goods were not rejected within reasonable time, then, they are deemed to have been accepted. Accordingly, the Trial Court held that, there is no triable issue involved in the Suit, so as to grant leave to defend the Suit.

6. While challenging this order of the Trial Court, the submission of learned counsel for the Petitioner is that, there are no crystallized dues, which are to be liquidated, admitted, acknowledged and in such situation, there cannot be a Summary Suit itself. Secondly, it is submitted that, there are 'Ledgers', on the basis of which the 'Books of Accounts' were maintained by the Respondent. Similarly, the Petitioner is also having his own 'Books of Accounts' and Petitioner must be given an opportunity to show those 'Books of Accounts' and also to show that the goods supplied were defective.

7. In support of his submission, learned counsel for the Petitioner has placed reliance on the Judgment of the Division Bench of this Court in the case of *Vinod Kumar Saboo Vs. Sudarshan Vishwanath Malpani and Ors.*, MANU/MH/0542/2017, wherein the Division Bench of this Court has referred to its earlier decision in the case of *IAL Logistics India, [a Division of IAL Container Line (India) Ltd.] Vs. Quantum International, 2011 (5) Mh.L.J. 931*, and elaborated on the scheme and object of Order 37 of the CPC. It was held that,

“5. This Court [Coram : Anoop V. Mohta) in *IAL Logistics India [a Division of IAL Container Line (India) Ltd. Vs. Quantum International, 2011 (5) Mh.L.J. 931*, while dealing with the scheme and object of Order 37 of the Code of Civil Procedure, 1908, (CPC), has observed, in paragraph No.10, that :-

“10. The scheme and purpose of Order XXXVII of the Code of Civil Procedure (CPC) can be summarised as under :-

The purpose and the basic of Summary Suit :-

- (a) A Plaintiff, if chooses to invoke the provisions of Order XXXVII for recovery of amount, the basic obligations and elements, as required, need to be fulfilled. The Summary Suit so filed, must fall within the four corners of Order XXXVII for getting Judgment/Decree summarily.*
- (b) As per Rule 227 of the Bombay High Court (Original Side) Rules, 1980, the Plaintiff must take out an appropriate proceeding within six months, once such Suit is instituted, though it is subject to condonation of delay, if case is made out.*
- (c) The object of Order XXXVII is to recover the crystallized dues, liquidated, admitted, acknowledged debt/monetary claim by a summary procedure, without long trial, principally based upon a written document executed in the course of business, in accordance with law. It is a supportive measure for recovery of unpaid debt/amount covering all the negotiable instruments, as contemplated under the Negotiable Instruments Act, apart from a valid, written contract/receipt/acknowledgment. It may be an express term or an implied term, based upon facts and circumstances of the case, considering the practice, trade and usage of the commerce and*

the trade. This also covers part from principal amount, express or implied terms of the interest.”

8. According to learned counsel for the Petitioner, if the object of Order 37 CPC is to recover the crystallized dues, which are principally based upon a written document executed in the course of business, then, in this case, there is no such written document. Secondly, it is submitted that in the case of *IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd.*, (2017) 1 SCC 568, the Hon'ble Apex Court, in paragraph No.6, has also laid down the following principles :-

“17. Accordingly, the principles stated in paragraph 8 of Mechelec's case will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram's case, as follows :-

17.1 If the Defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the Plaintiff is not entitled to leave to sign judgment and the Defendant is entitled to unconditional leave to defend the Suit.

17.2 If the Defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign Judgment and the Defendant is ordinarily entitled to unconditional leave to defend.

17.3 Even if the Defendant raises triable issues, if a doubt is left with the Trial Judge about the Defendant's good faith or the genuineness of the triable issues, the Trial Judge may impose

conditions both as to time or mode of trial, as well as payment into Court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4 If the Defendant raises a defence, which is plausible but improbable, the Trial Judge may impose conditions as to time or mode of trial, as well as payment into Court or furnishing security. As such, a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the Court feels the justice of the case requires.

17.5 If the Defendant has no substantial defence and/or raises no genuine triable issues and the Court finds such defence to be frivolous or vexatious, then leave to defend the Suit shall be refused and the Plaintiff is entitled to Judgment forthwith.

17.6 If any part of the amount claimed by the Plaintiff is admitted by the Defendant to be due from him, leave to defend the Suit, (even if triable issues or a substantial defence is raised), shall not be granted, unless the amount so admitted to be due is deposited by the Defendant in Court.”

9. According to learned counsel for the Petitioner, the Petitioner's case falls in Clauses (17.1) and (17.2), as referred above. It is urged that, the Petitioner is having substantive defence that the goods supplied

were defective and in such situation, the Petitioner is having a fair and reasonable defence; therefore, the Trial Court has committed an error in refusing leave to defend. It is urged that, the defence raised by the Petitioner is neither illusory or sham, nor practically moon-shine and, therefore, the Respondent cannot be entitled to get the Suit decided as undefended.

10. Learned counsel for the Respondent has, in this respect, pointed out to the e-mails exchanged between the Petitioner and his customer, in which the Petitioner has categorically stated that, *“in every box, they found 100% quality of the inspected goods”*. Thus, it is urged that, when Petitioner himself has certified that the goods were of 100% quality, there is no question of any triable issue being involved.

11. In my considered opinion, the Trial Court has rightly considered this aspect and rejected unconditional leave to defend. In the facts of the present case, however, at the most, the Petitioner can be entitled to conditional leave to defend the Suit on deposit of substantial amount of the suit claim. As the Suit is for recovery of the amount of Rs.37,33,586/- , the conditional leave can be granted to the Petitioner to defend the Suit, subject to deposit of 75% of the said amount in the Trial Court within a period of four weeks from today.

12. Accordingly, the Writ Petition is allowed.

13. The Petitioner is granted leave to defend the Suit, subject to the condition of depositing 75% of the suit claim of Rs.37,33,586/- with the Trial Court within a period of four weeks from today.

14. Till then, the ad-interim stay granted by this Court vide order dated 30th March 2017, which is continued from time to time till today, will continue.

15. On failure of the Petitioner to deposit the amount of 75% of the suit claim of Rs.37,33,586/- within the stipulated period, the order of ad-interim stay and this order would stand vacated, without further reference to this Court.

16. If such amount is deposited by the Petitioner-Plaintiff, then, the Respondent-Defendant is at liberty to file an appropriate application before the Trial Court for withdrawal of the said amount and the Trial Court shall consider such application on its own merits, in accordance with law.

17. Rule is made absolute in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]