

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

WRIT PETITION NO. 3598 OF 2016

Vipul M. Kothari	...	Petitioner
V/s.		
Bharti Automobiles Pvt. Ltd.	...	Respondent

- Mr.Moinuddin Ahmed Khan for the Petitioner.
- Mr.Rajender Singh Saluja for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 17th APRIL, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and 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 20th January 2016 passed by the City Civil Court, Mumbai, below the Summons for Judgment No.423 of 2014 in Summary Suit No.769 of 2014. By the impugned order, the Trial Court has dismissed the Summons for Judgment and granted the Respondent/Defendant unconditional leave to defend the suit.

3] The facts of the case are to the effect that, the Respondent, herein, has filed the suit for recovery of the amount of Rs.7,01,723.79 with future interest at the rate of 24% per annum on the principal amount of Rs.4,29,118/- towards the services rendered to the Respondent in respect of the house keeping. As per the case of the Petitioner, vide quotation dated 15th July 2007, the Petitioner has offered its services to the Respondent and the Respondent has agreed to avail those services at the rate of Rs.34,000/- per month with Service Tax and miscellaneous charges. The Petitioner was to start the work on trial basis from September 2007. The copy of letter to that effect is produced at page 28 of the Writ Petition.

4] According to the Petitioner, Petitioner has rendered such services and Respondent has also paid the bills raised till December 2009, but, thereafter, there were defaults in making payment. It is further the case of the Petitioner that from April 2010 service charges were increased to Rs.44,000/- per month. Till August 2011 amount of Rs.2,68,620/- was found due and payable from Respondent. Respondent did not clear those invoices but only issued two cheques for Rs.44,770/- and Rs.87,750/- in favour of the Petitioner. Both these cheques were dishonored and hence, a Criminal Case was filed against the Respondent, in which he was convicted. Thus, according to the

case of the Petitioner, this amount which is found due from Respondent be directed to be paid to the Petitioner.

5] Respondent resisted the suit contending *inter-alia* that the suit is barred by limitation. The Respondent has not received the letter dated 31st March 2010 and the same is without signature of the Petitioner and seal of the Respondent-Company on invoices is forged. It was submitted that there was no agreement between Petitioner and Respondent to engage the services of Petitioner on permanent basis. The Petitioner was appointed on trial basis only for a month. The cheques were given to the Petitioner as a security for trial work for a month. There was no agreement to pay interest as claimed. Amount of T.D.S. and interest claimed thereon was also not part of quotation.

6] In view of these rival contentions raised before the Trial Court, the Trial Court was pleased to hold that as the suit is in respect of the invoices for the month of May 2011 to January 2012 only, the suit is within limitation. As regards the other contentions, it was held by the Trial Court that, the endorsement on the letter dated 15th July 2007 clearly shows that the Respondent has agreed to pay Rs.34,000/- per month with service tax and actual toiletries. The Statement of Account of banker of the Petitioner shows that, continuously till 2009 the amount as agreed was paid, though

Respondent had made a stipulation that the services will be only for a period of one month on trial basis. Therefore, the Trial Court held that the contention raised by the Respondent that there is no contract between the parties cannot be accepted. The Trial Court, however, found that as regards the increase in the charges to the tune of Rs.44,000/- per month and non payment thereof, there was nothing on record to show that the Respondent accepted the proposed increase. Moreover, in the quotation dated 15th July 2007 also, it was not mentioned that the rates and charges will be revised from certain period. The Trial Court further held that the claim made by the Petitioner towards the service charge and interests is not forming part of the contract and in view thereof, the Trial Court found that there are triable issues and therefore, leave to defend is required to be granted.

7] The only grievance raised by learned counsel for the Petitioner is that the triable issues pertain to the increase in the service charge or the payment of interest and the T.D.S. amount. However, as regards the initial rate of Rs.34,000/- per month, as per the quotation, with the service charge and actual toiletries, the Trial Court should have directed the Respondent to pay or deposit the said amount in the Court and subject to that only, conditional leave should

have been granted.

8] I find much substance in this contention because the Trial Court itself has held that the suit is within limitation. The Trial Court has also held that there is a contract between the parties. The only disputed issue, the Trial Court has considered is about the increase in service charges from Rs.34,000/- to Rs.44,000/- per month and to that extent whatever the amount which is found due from the Respondent to the Petitioner at the rate of Rs.34,000/- per month should have been directed to be deposited and subject to that leave should have been granted.

9] According to learned counsel for the Petitioner, the amount of Rs.3,06,000/- is due from the Respondent towards the payment as per the quotation of Rs.34,000/- per month + Service Tax + actual toiletries. The order of the trial Court can be therefore modified making the leave granted to the Respondent to defend the suit subject to deposit an amount of Rs.3,06,000/- in the Trial Court.

10] Accordingly, the Writ Petition is allowed. The impugned order passed by the Trial Court granting unconditional leave to defend the suit is set-aside. Leave is granted to the Respondent to defend the suit subject to condition of deposit of Rs.3,06,000/- in the Trial Court

within a period of 8 weeks from today. On failure of the Respondent to deposit the said amount within the stipulated period, the leave to defend shall stand automatically cancelled without further reference to this Court.

[DR.SHALINI PHANSALKAR-JOSHI, J.]