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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8066 OF 2014**

M/s. H. R. Metal Corporation

.....Petitioner

V/s.

M/s. Bothra Metals Alloys Pvt. Ltd.

....Respondent

Mr. R. S. Tripathi for the petitioner.

Mr. S. K. Mishra for respondent.

CORAM : NITIN W. SAMBRE, J.**DATE : 27th JUNE, 2018.****P.C.**

Heard Shri. Tripathi, the learned counsel for the petitioner/original defendant on the issue of whether the petitioner is entitled for right to defend unconditionally in a summary suit trial.

2 Vide impugned order pursuant to provisions of Order XXXVII

Rule 3 sub Rule 5, the learned Judge, City Civil Court has put present petition/original defendant to condition of depositing amount of Rs. 30 Lakhs against the suit plaint so as to give him right to defend. The total claim in the suit is pertaining to recovery of amount of Rs. 60 Lakhs and odd amount.

3 The suit claim is based on the alleged business transaction in between the petitioner and the respondents as it is claimed that the petitioner has received goods from respondent/plaintiff and the consideration whereof is not parted. The learned Civil Court dealing with summary trial, issued summons to the petitioner/defendant on the issue of Judgment.

4 In the aforesaid background, while carving out an exception to the impugned order and seeking relaxation of condition to deposit an amount of Rs. 30 Lakhs, Shri. Tripathi would urge that if the plea of the present petitioner raised before the learned Court below, if appreciated, the finding recorded by the learned Small Cause Court itself demonstrates that there is triable issue. According to him, the

law laid down by the Apex Court in the matter of **State Bank of Hyderabad vs. Rabo Bank**¹ para 20 of which substantiate his contention which reads thus:

*“We are in total agreement with the view taken by this Court in **Raj Duggar v. Ramesh Kumar Bansal** that leave to defend the summons for judgment shall always be granted to the defendant when there is a triable issue as to the meaning or correctness of the documents on which the claim is based or the alleged facts are of such nature which entitle the defendant to interrogate or cross-examine the plaintiff or his witnesses”.*

5 As such he claims that he should have been granted blanket right to defend by relaxing the condition of depositing amount of Rs. 30 Lakhs.

6 *Per contra* the learned counsel for the respondent supports the order impugned.

7 From the record it depicts that the present petitioner/original defendant has already parted with the payment to some extent as against the suit claim. The Civil Court then proceeded to observe

¹ [(2015) 10 SCC 521]

that there was no agreement between the parties *qua* the claim of interest at the rate of 21%. There apart, it is the case of the present petitioner before the Court below that they have acted mediator for the transaction in question.

8 In the aforesaid background, once the fact that the petitioner has accepted that they have acted as mediator in the transaction in question and their conduct of paying part of the amount claimed, speaks of their liability *qua* the payment sought through the suit.

9 That being so, in my opinion, the condition of deposit incorporated in the order impugned while granting leave to defend under provisions of Order XXXVII of sub Rule 5 of Rule 3 appears to be just and proper. However, the amount of Rs. 30 Lakhs which is directed to be deposited by the present petitioner/defendant, in my opinion, appears to be unreasonable, as the petitioner has raised a plea, which is accepted by Civil Court that petitioner acted as mediator and has already made part payment. That being so, the condition of deposit as ordered by the Civil Court in the impugned

order is modified as under:

10 Petitioner shall deposit amount of Rs. 15 Lakhs, within period of 12 weeks, so as to enjoy his right to defend the suit.

11 With above modification, I hardly notice there is any cause which warrants interference. Petition as such disposed of in the above terms.

[NITIN W. SAMBRE, J.]