

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8453 OF 2016

Spark Biotech, Mumbai.	 Petitioner
V/s.	
Akola Chemicals (India) Ltd., Mumbai	 Respondent

Mr. R.S. Ghadge, i/by Bhagirathan, for the Petitioner.

Mr. Rubin Vakil, with Mr. Aniruddha Lad and Mr. Permanand Bhosale,
i/by M/s. B.J. Law Offices, for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 14TH MARCH 2018.

P.C. :

1. Heard Mr. Ghadge, learned counsel for the Petitioner, and Mr. Vakil, 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 17th March 2015 passed by the City Civil Court, Dindoshi, Borivali Division, Mumbai, thereby making absolute the Notice of Motion No.1274 of 2014.

3. The said Notice of Motion was taken out by the Respondent herein to set aside the ex-parte Judgment and Decree dated 21st April 2014

passed in S.C. Suit No.3236 of 2013. The learned Trial Court has allowed the said Notice of Motion, subject to payment of cost of Rs.10,000/- to the Petitioner herein and, accordingly, it is submitted that, the Respondent has already deposited the cost of Rs.10,000/- in the Trial Court and thereafter, the issues have also been framed in the Suit and the matter is for leading evidence before the Trial Court.

4. Learned counsel for the Petitioner submits that, he has no objection to set aside the ex-parte Judgment and Decree; however, it should be subject to deposit of, at-least, half of the decretal amount. In this respect, learned counsel for the Respondent points out that, the entire claim of the Petitioner was on the basis of the false and fabricated 'Invoices' and, hence, the Trial Court has rightly held that, the matter needs to be decided on merits and no prejudice is going to be caused to the Petitioner, if it is done so.

5. Considering the progress made in the Suit and the specific plea raised by the Respondent that the claim was based on the false and fabricated documents, the interest of justice requires that, the matter should be decided on merits. As already the Trial Court has imposed the cost and already the Suit is also posted for hearing, at this stage, no direction can be given for depositing the half of the decretal amount in the Court.

6. Petitioner has also tendered the list of the witnesses, after the issues were framed and the Suit was fixed for hearing.

7. Hence, the Writ Petition stands dismissed; however, hearing of the Suit is expedited.

[DR. SHALINI PHANSALKAR-JOSHI, J.]