

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 13972 OF 2017

Hoysala Technologies India Pvt. Ltd. Thr. Director ...Petitioner

Versus

Montanari Lifts Components Pvt. Ltd.

...Respondent

Mr.S.V.Dhakephalkar with Mr.S.A.Parundekar, for the Petitioner.

CORAM : G.S.KULKARNI, J.**DATE : 12 February 2018**

P.C. :

1. Heard Mr.Dhakephalkar, learned Counsel for the petitioner. Challenge in this petition is to the order dated 20 July 2017 passed by the learned Joint Civil Judge, Senior Division, Khed-Rajgurunagar, whereby the application of the petitioner-defendant seeking unconditional leave to defend the suit has been partly allowed in the following terms:-

- “1. Application is allowed.
2. Defendant is granted leave to defend subject to payment of Rs.25,00,000/- in the court.
3. The defendant has to deposit above amount within two months from the date of order. The said amount be kept in fix deposit till further order.
4. Cost in cause.”

2. The respondent/plaintiff filed summary suit in question for recovery of an amount of Rs.50,10,485/-. The transaction in question was in regard to supply of certain goods. It is not in dispute that the orders were placed by the defendant on the establishment of the respondent/plaintiff situated at MIDC, Chakan, Pune. The petitioner/defendant had defaulted in making payment of the amount due under various invoices raised by the respondent/plaintiff. Respondent/plaintiff accordingly filed the above summary suit. The petitioner/defendant moved an application in question seeking unconditional leave to defend the suit. Basically three objections were raised on behalf of the petitioner. The first objection was that there was no written contract. It is submitted by the petitioner that the invoices raised by the respondent/plaintiff would not show the written contract. The second objection was to the jurisdiction of the court to try and entertain the suit as the contention of the petitioner/defendant is that the components were supplied outside the jurisdiction of the court. The petitioner/defendant contended that the petitioner/defendant is the sub-dealer of respondent/plaintiff and the plaintiff had supplied components/goods to the clients of the petitioner/defendant at various places and not to the defendant. It was further contended by the

petitioner that the clients of the petitioner had intimated about some manufacturing defects and the petitioner had represented the issues of defects by sending e-mails to the respondent/plaintiff.

3. Learned trial Judge in passing the impugned order did not find favour in the objections as urged on behalf of the petitioner/defendant raising the ground of there being no valid contract as also on the ground of jurisdiction of the Court. However, on the issue that there are certain manufacturing defects in the goods supplied by the respondent/plaintiff, the trial learned Judge has come to a conclusion that conditional leave to defend ought to be granted by directing the defendant to defend the suit subject to deposit of Rs.25,00,000/- in the Court within a period of two months from the date of the impugned order. The relevant observations in this regard can be seen in paragraph 9 of the impugned order. The Court referring to the arguments of the petitioner/defendant in regard to the defects in the goods and exchange of e-mails in that regard, has come to a conclusion that there is some defence to the defendant and considering the law laid down by the Supreme Court in “**IDBI Trusteeship Vs. Hubtown**” had felt it appropriate to consider such defence as a plausible defence and thus has passed the impugned order.

4. Learned Counsel for the petitioner has limited submissions to urge. He submits that once the court in paragraph 9 has come to a conclusion that the petitioner/defendant has a defence which was plausible, then necessarily the trial Court should have granted unconditional leave to defend. It is submitted that the learned trial Judge has taken into consideration the fact that the goods supplied are defective and having reached to this prima facie conclusion, then necessarily the direction of the learned trial Judge that the petitioner should deposit the said amount, was harsh and not justifiable. In supporting the submission, Mr.Dhakephalkar has placed reliance on the recent decision of the Supreme Court in the case “**IDBI Trusteeship Services Ltd. Vs. Hubtown Limited**”¹ and more particularly the law laid down in paragraphs 17.2, 17.3 and 17.4 of the said judgment.

5. Having heard the learned Counsel for the petitioner, in my opinion, the contentions as urged on behalf of the petitioner cannot be accepted. A perusal of the impugned order clearly indicates that the basic submission in the petitioner disputing the contract in question, is not accepted by the learned trial Judge. In regard to second objection as to jurisdiction, it is appropriately dealt in the impugned order and

¹ (2017)1 SCC 568

the Court has prima facie held that the court has jurisdiction to entertain the suit. Thirdly, merely because some e-mails were addressed in regard to the defects in the goods, would not take away the discretion of the Court in imposing condition on the petitioner to deposit the amount as directed. There are clear observations made by the learned trial Judge in paragraph 8 of the impugned order to the effect that it was the petitioner/defendant who had placed the purchase orders and it was the clients of the defendants who had intimated about the manufacturing defects. These observations in my opinion, would in no manner support the contention of the petitioner that this is a case where unconditional leave to defend ought to have been granted. Learned trial Judge has observed that it is only a plausible defence and considering the clear position in law as laid down in paragraph 17.2 and 17.3 of the decision of the Supreme Court in “**IDBI Trusteeship Services Ltd. Vs. Hubtown Limited**”, it cannot be said to be totally unjustifiable for the trial Court to impose conditions. Moreover, in the said decision, the Supreme Court has held that 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. The Supreme Court has also held that 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 still impose conditions, both as to time or mode of trial, as well as payment into court or furnishing security. Thus considering this clear position in law as applicable to the facts of the case, I find no infirmity in the impugned order passed by the learned trial Judge.

6. The petition is devoid of any merit. It is accordingly rejected. No costs.

7. Time to deposit the amount is extended upto 28 February 2018.

(G.S.KULKARNI, J.)