

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.43 OF 2018

M/s Vinatia Construction Pvt.
Ltd

.... Petitioner

V/s.

GRD Steel Industries Pvt Ltd.

.... Respondent

Mr. Ashok M. Bhatia, for the Petitioner.

Mrs. Meenakshi Dhanuka Rungta and Mr. Pranesh Gada i/by Dhanuka and Partners, for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 5TH FEBRUARY 2018.

P.C. :

1. Heard learned counsel for the petitioner.
2. By this Civil Revision Application, filed under Section 115 of Code of Civil Procedure, the petitioner is challenging the order dated 5th October 2017, passed by the City Civil Court, Dindoshi, Mumbai, in Summons for Judgment No.66 of 2016 in Summary Suit No. 1 of 2016.
3. The said Summons for Judgment was filed by the respondent-plaintiff and it was opposed by the petitioner-defendant. The trial Court has rejected the Summons for Judgment and granted the petitioner leave to defend the suit subject to condition of depositing amount of Rs.50,00,000/- in the Court within two months from the date

of order.

4. The submission of learned counsel for the petitioner is that there is genuine dispute between the parties as the very contention of the petitioner is that no such Memorandum of Understanding on the basis of which suit is filed, was executed. The Memorandum of Understanding produced on record by respondent is a false and fabricated document. Petitioner has also lodged complaint about the same in the Magistrate Court and necessary orders are being passed therein. Therefore, the trial Court should not have imposed the condition to deposit the entire amount of Rs.50 lacs in the Court, while granting leave to the petitioner to defend the suit.

5. However, perusal of the impugned order passed by the trial Court reveals that respondent-plaintiff has filed suit on the basis of Memorandum of Understanding dated 23.6.2012. The petitioner has not disputed the fact that he has received amount of Rs.50,00,000/-. As per contention raised by respondent-plaintiff, the said amount was to be returned with interest at the rate of 24% per annum.

6. As the petitioner has raised contention that the Memorandum of Understanding was not genuine document and amount of Rs.50,00,000/- was admitted to be received as token amount or earnest money towards booking of the flat, the trial Court rightly held that triable issues are raised by the petitioner and therefore, considering the provisions of Order 37 Rule 2 sub rule (5), granted conditional

leave.

7. Hence, only because the triable issues were raised by the petitioner, leave to defend is granted and in view of Proviso and specific provision of Order 37 CPC, as the petitioner has admitted receipt of the amount of Rs.50,00,000/-, the trial Court has granted such leave subject to condition of depositing the said amount, in the Court.

8. As regards submission of learned counsel for the petitioner that the trial Court has directed petitioner to deposit entire amount of Rs.50,00,000/- in the Court, the perusal of the plaint filed in the suit shows that respondent is also claiming interest at the rate of 24% per annum and this claim of interest on the said amount is on the basis of Memorandum of Understanding dated 23.3.2016. The trial Court has not directed to deposit the amount of interest which must be substantial one. In such situation, no fault can be found in the impugned order passed by the trial Court. The Revision application being without any merit, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]