

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2639 OF 2015

M/s. Indian Scientific
Glass Industries

.. Petitioners

vs.

Parenteral Drugs
(India) Ltd.

.. Respondents

Mr. Harish Pandya a/w. Mr. Dalla i/b. M/s. Dalla and Associates for the Petitioners.

Mr. R.D. Soni a/w. Mr. V.R. Kasale i/b. M/s. Ram and Company for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 27 MARCH 2019.

ORAL JUDGMENT :-

1] On 20th March 2019, this Court made the following order:

“ . Heard arguments.

2. Place this Petition on 27th March, 2019 for orders on the supplementary board.

3. In the meanwhile, learned counsel for the parties state that the parties will explore the possibility of settlement.”

2] Today, Mr. Harish Pandya, learned counsel for the petitioners, submits that the petitioners have not received any proposal for settlement.

3] Since, the arguments had already been concluded on 20th March 2019, I proceed to dispose of Writ Petition No.2639 of 2015.

4] The challenge in this petition is to the order dated 25th September 2014 by which the learned Trial Judge has granted the respondents – defendants leave to defend the suit unconditionally.

5] From the perusal of the impugned order as well as the material on record, it is apparent that the learned Trial Judge was persuaded to grant unconditional leave mainly on the ground that the respondents – defendants had raised certain disputes in relation to certain goods supplied by the petitioners. The learned Trial Judge reasoned that since there are disputes on this aspect, there is a triable issue raised and consequently, unconditional leave to defend was due.

6] However, Mr. Harish Pandya, learned counsel for the petitioners, has rightly pointed out that the Statement of Accounts were furnished to the respondents and at that

stage, no dispute was raised. In fact, the Statement of Accounts bear the endorsement on behalf of the respondents. Further, the records indeed reveal that the dispute as regards the goods was basically raised in respect of goods supplied under Challan No.291 or Invoice No. 291. Mr.Pandya is pointed out that the claim which is made in the summary suit does not even relate to these challans or invoices. He points out that in fact as against these challans and invoices, the petitioners have already received the amounts from the respondents.

7] Taking into consideration the aforesaid, it is apparent that this was not a fit case for grant of any unconditional leave to the respondents. The total claim in the summary suit is in the range of Rs.20 Lakhs or thereabouts, at least in so far as the principal is concerned. Along with interest, the claim runs upto approximately Rs.24 Lakhs.

8] Taking into consideration the materials on record and circumstances as aforesaid, the impugned order is modified so as to grant conditional leave to the respondents to defend

the summary suit. The condition shall be deposit of Rs.10 Lakhs within a period of six weeks from today. This means that if an amount of Rs.10 Lakhs is deposited by the respondents before the learned Trial Court within a period of six weeks from today, the respondents will have leave to defend the suit. If however, such amount is not deposited, then, the impugned order granted unconditional leave shall stand set aside and the learned Trial Judge shall then proceed to dispose of the summary suit in accordance with law.

9] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

10] All concerned to act on the basis of an authenticated copy of this order.

11] At this stage, Mr. V.R. Kasale, learned counsel for the respondents, seeks eight weeks time to deposit the amount of Rs.10 Lakhs instead of six weeks already granted. Since the request is reasonable, eight weeks time is granted instead of six weeks indicated earlier.

(M. S. SONAK, J.)