

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5139 OF 2019

Rajendrakumar Kaluchand Jain	...	Petitioner
V/s.		
Shree Daksh Jyot Silk Mills		
Pvt. Ltd. & Anr.	...	Respondents

Mr.PG. Pillay for Petitioner.
Mr.Atharva A. Dandekar a/w. Mr.Gautam Jain for Respondent No.1.

CORAM : A.S. GADKARI, J.

DATE : 6th December 2019.

PC. :

1] By the present Petition under Article 227 of the Constitution of India, the petitioner-original plaintiff has impugned Order dated 21st December 2018 passed below Exhibit-12 in Summary Suit No.112 of 2017 thereby granting permission to the respondent/original defendant No.1 to defend the suit, i.e. Summary Suit No.112 of 2017, filed by the plaintiff under Order 37 of the Civil Procedure Code (for short, "Code").

2] Heard Mr.Pillay, learned counsel for the petitioner and Mr.Dandekar, learned counsel for the respondent No.1. Perused the entire record annexed to the Petition.

3] The record indicates that, the petitioner has filed the aforesaid Summary Suit No.112 of 2017 in the Court of Civil Judge Senior Division Thane at Thane under Order 37 of the Code for recovery of a sum of Rs.2,57,01,667/- on the premise that, on the basis of the Orders placed by the respondent No.1, the petitioner sold and supplied goods to the respondent No.1 and respondent No.1 did not make payment of the said goods to the petitioner. The record further indicates that, after receipt of summons the respondent No.1 filed an application for leave to defend the said suit. In the said application, though the respondent No.1 has admitted business relationships interse between the parties, has nowhere admitted that, he owes a particular sum to the petitioner.

4] Learned counsel appearing for the petitioner submitted that, though in the points framed for consideration by the Trial Court, the Trial Court recorded a finding that the respondent No.1 does not have substantial defence to raise and the defence intended to be put up by the defendant appears to be frivolous and vexatious, allowed the respondent to defend the said suit unconditionally.

5] As noted above, a perusal of the application filed by the respondent No.1 would clearly indicate that, he has nowhere admitted his liability in his application. The contentions of both the parties gave rise to triable issues and therefore the Trial Court has rightly granted permission to the respondent No.1

to defend the said suit unconditionally.

6] In view of the above, this Court is of the view that, the Trial Court has not committed any error while passing the impugned Order.

Petition is accordingly dismissed.

[A.S. GADKARI, J.]