

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

WRIT PETITION NO.9525 OF 2018

Viraj Casting Pvt. Ltd. ... Petitioner
Vs.
Viraj Projects (I) Pvt. Ltd. ... Respondent

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Mr. Ketan A. Dhavle for the Petitioner.
Mr. Madhav Jamdar I/b. Mr. Hemant Ghadigaonkar for the Respondent.

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CORAM : M. S. KARNIK, J.

DATE : 26th AUGUST, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. By this Petition filed under Article 227 petitioner is challenging the order passed by the Trial Court dated 1.2.2018 granting an unconditional leave to defend to the respondent to defend the suit.
3. The petitioner filed a suit for recovery of interest on delayed payment. It is the case of the petitioner-original plaintiff that the goods were supplied to the respondent. It is their case that despite invoices on record clearly stating the period within which payment should be made, the respondent delayed the payment as per invoice. According to him the petitioner is

entitled to recover interest on the delayed payment in terms of the invoices on record. He would further submit that the Trial Court has not taken into consideration all the invoices which clearly records the time within which payments are to be made. Learned counsel would submit that the Trial Court was not justified in observing that the amount claimed by the plaintiff can not be ascertained or clearly shown to be payable. He would further submit that the Trial Court was not justified in holding that part of the claim is time barred at the stage of granting an unconditional leave to defend.

4. Learned counsel for the respondent on the other hand supported the order of the Trial Court. He would submit that though the petitioners supplied the goods, the same were not supplied within time stipulated in the invoices and as per the agreement. He would invite my attention to Page 16 of the paper book. Referring to Para 6 of plaint he would submit that in so far as the claim in Sr. No.1 to 13 is concerned, the same is time barred. He would further submit that in these circumstances, the Trial Court has held that the triable issues are involved.

5. Learned counsel for the petitioner in response to the submission made by the learned counsel for the respondent would submit that the time barred claim can be separated, but the Trial Court, at least to the extent of other admitted claim should have directed the defendant to deposit the amount before granting leave.

6. Heard learned counsel for the parties. I have gone through the order passed by the Trial Court. From the plaint I find that of the 27 invoices on the basis of which the claim for interest on delayed payment is made, there appears to be prima facie substance in the submission of respondent that as many as 13 claim are barred by limitation.

7. In my opinion, at the stage of granting an unconditional leave to defend, the Trial Court need not have held that part of the claim is time barred. After framing the appropriate issues, the contention of the respondent that some of the claims are time barred can always be answered. It is also one of the contention of the respondent that the goods were not supplied by petitioner within the time stipulated in the invoice.

Though Trial Court has not adverted to this aspect, there is substance in the contention of learned counsel for respondent that triable issues are involved as this is the main reason for delayed payment. I therefore see no reason to interfere with the impugned order.

8. It is now pointed out that after the order was passed, the respondent has already filed written statement and even the issues have been framed. Keeping all the contentions of the parties open to be agitated in the suit including the issue of time barred claim, the order passed by the Trial Court granting an unconditional leave to defend does not call for any interference.

9. The Petition is therefore dismissed.

10. Considering the controversy involved, the Trial Court is requested to expedite the suit.

(M. S. KARNIK, J.)