

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.7280 OF 2013**

M/s. Raj Automobiles & Anr. .. Petitioners  
Versus  
M/s. Emirates Lube India Pvt. Ltd. .. Respondents

Mr. Pradeep Ramchandani for petitioners.

Mr. D.S. Mhaisapurkar for respondent No.1.

**CORAM : K.K. TATED, J.**

**DATE : 04 FEBRUARY 2019.**

**P.C:-**

. Heard learned Counsel for parties.

2. By this writ petition under Article 227 of the Constitution of India, petitioner/original defendant is challenging the order dated 29.06.2013 passed by the Civil Judge, Senior Division, Thane in Summary Suit No.47 of 2012 granting conditional leave to the petitioner/original defendant to defend Summary Suit on depositing the sum of Rs.9,93,477/- The learned Counsel for the petitioner submits that this Court by order dated 18.08.2013 directed petitioner to deposit sum of Rs.3,00,000/- in the trial Court. He submits that the said amount is already deposited by them in the trial Court.

3. Learned Counsel appearing on behalf of petitioner/original defendant submits that at the time of granting conditional leave to the petitioner to defend the Summary Suit, the trial Court failed to consider the fact that there was dispute

about the due and payable amount by the defendant to the plaintiff. He submits that some of the amounts paid to them were not considered at the time of deciding their application for defending the Summary Suit unconditionally. On the basis of this submission, learned Counsel for the petitioner submits that the impugned order dated 29.06.2013 passed by the trial Court directing them to deposit the sum of Rs. 9,93,477/- be set aside.

4. On the other hand learned Counsel appearing on behalf of respondent No.1 submits that the original defendant in his reply admitted that there was dispute only of the sum of Rs.3,00,000/-. Therefore, this Court be pleased to direct the defendant to deposit the remaining amount in the trial Court. He further submits that at the time of passing the impugned order dated 29.06.2013, the trial Court has considered the fact that the petitioner/original defendant is prima facie liable to pay the said amount. Hence, trial Court granted conditional leave to defend the suit. Therefore, there is no substance in the present writ petition and same is required to be dismissed.

5. I heard both the sides at length. It is to be noted that whether the respondent is liable to pay the entire amount is required to be decided at the time of final hearing after leading the evidence. At present the defendant already deposited the sum of Rs. 3,00,000/- in the trial Court as per the order passed by this Court on 09.08.2013. In any case the present suit is of 2012. Considering these facts and as the suit can be decided within stipulated time, following order is passed :-

- a) Petitioner is permitted to defend the Summary Suit by filing written statement within four weeks from today with copy to other side.
- b) Amount deposited by the petitioner pursuant to the earlier order dated 19.08.2013 to continue till the hearing and final disposal of the Summary Suit No.47 of 2012
- c) Hearing of Summary Suit No.47 of 2012 is expedited.
- d) This Court expect that the trial Court to decide the said Summary Suit as early as possible. But in any case on or before 31.07.2019.
- e) Writ petition stands disposed of accordingly.
- f) No order as to costs.

**(K.K.TATED, J.)**