

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

WRIT PETITION NO.13356 OF 2017

M/s. Miraj Electrical & Mechanical
Co. Pvt. Ltd. through its duly
Authorized representative

.. Petitioner

Vs.

State of Maharashtra & Ors.

.. Respondents

Mr.Javeed Hussein I/b Hussein & Co. for petitioner.

Mr.S.L.Babar, AGP for State.

CORAM : N.J. JAMADAR, J.

DATE : 11TH JULY 2019

P.C.

1 Heard the learned counsel for the petitioner.

2 The petitioner, who is the original plaintiff, calls in question the legality, propriety and correctness of the order passed by the learned Judge, City Civil Court on 19th April 2017 in Summons for Judgment No. 254 of 2016 in Summary Suit No. 761 of 2015, whereby the prayer for summons for judgment came to be dismissed and an unconditional leave to defend the suit was granted to the defendants.

3 The petitioner-plaintiff had instituted the Summary Suit No.761 of 2015 for recovery of a sum of Rs.32,90,844/- along with further interest at the rate of 18% per annum, with the allegations that the defendants had

committed default in payment of the price of the goods sold and delivered by the plaintiff to the defendants. The learned Judge, City Civil Court was persuaded to dismiss the prayer of summons for judgment and grant unconditional leave to the defendants to defend the suit as the learned Judge found that the defendants are entitled to an unconditional leave to defend the suit. The learned Judge, *inter-alia*, opined that, the defendants are in a position to mount a three-pronged challenge to the tenability of the suit itself, namely, bar of jurisdiction, limitation and non-joinder of necessary parties. In the process, the learned Judge had recorded elaborate reasons to arrive at the aforesaid conclusion.

4 The learned counsel for the petitioner has a genuine apprehension that the findings recorded by the learned Judge, while declining to grant the prayer for the summons for judgment, and granting unconditional leave, may cause prejudice to the claim of the petitioner at the trial of the suit. The apprehension cannot be said to be wholly unfounded as the learned Judge has recorded elaborate reasons though, evidently, the said exercise was carried out by the learned Judge for the determination of the question of entitlement of the petitioner for the summons for judgment and grant or otherwise of the unconditional leave to defend the suit.

5 In the circumstances, there is no reason to interfere with the order passed by the learned Judge granting an unconditional leave to defend the suit. However, it is necessary to clarify that the learned Judge shall not be influenced by the observations made while recording the findings in the impugned order at the time of deciding the claim in the summary suit. The observations in the impugned order shall be deemed to have been made only for the purpose of determination of the issue of grant of leave to defend the suit.

6 The City Civil Court may also make an endeavour to decide the Summary Suit in accordance with law as expeditiously as possible.

7 Subject to aforesaid directions, the writ petition stands dismissed.

(N.J. JAMADAR, J.)