

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11217 OF 2019**

M/s. Kivi Sansho Packaging Pvt. Ltd. & Ors. ...Petitioners
Versus
Balkrishna Paper Mills Ltd. ...Respondent

Mr. Niranjan Shimpi a/w Mr. Prasad Bhabal i/b L. S. Shetty & Associates
for the Petitioners

Mr. S. L. Shah i/b Shah Legal for the Respondent

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 27th FEBRUARY 2020

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioners/original defendants have impugned the order dated 23rd August 2019 passed by the learned Ad-hoc Judge, City Civil Court, Greater Bombay, by which the learned Judge was pleased to grant the petitioners, conditional leave to defend the suit, on depositing an amount of Rs. 33,00,000/- jointly in the Court within four weeks from the date of the order. Learned counsel for the petitioners submits that the company's assets were auctioned by the Bank of India and Canara Bank, sometime in October 2012 and as such, Directors of the Company cannot be made personally liable to pay the claim amount as

sought for by the respondent/plaintiff. He submits that the company became defunct on or about 31st August 2015 and the registration of the defendant No. 1 company has also been cancelled by the Sales Tax Department.

3 Learned counsel for the respondent opposes the petition and submits that no interference was warranted in the said order. He further submits that the petitioners/original defendants, in the affidavit-in-reply filed by them, had categorically in para 2 admitted a liability of Rs. 33,88,256/- as due and payable by defendant No. 1 company to the respondent/plaintiff, on account of the materials received by the said company, as mentioned in the invoices. He submits that the petitioners cannot shift the responsibility being the directors of the defendant No. 1 company.

4 Perused the papers as well as the impugned orders. The respondent/plaintiff has filed a Summary Suit No. 331/2017 as against the petitioners/defendants under Order XXXVII Rule 2 of Civil Procedure Code and has prayed for the following reliefs :

“a) The Defendant be ordered and decreed to pay a sum of Rs.34,13,259/-. Being the principal amount due and

payable by the Defendants and interest thereon @ 18% p.a. amounting to Rs.16,41,266.13 (as on 30-09-2016) and for further interest @ 18% p.a. from 30-09-2016 till payment and/or realization and a sum of Rs.5,81,124/- for interest on delayed payment in accordance with the Debit Notes aggregating to Rs.56,35,649.13 as on 30-09-2016 as per the Particulars of Claim.”

5 The petitioners/defendants appeared in the said suit and filed their affidavit-in-reply. In the said affidavit, in para 2, it is specifically stated as under :

“2. I say that I have perused the Particulars of Claim and I admit that a sum of Rs.33,88,256/- (Rupees Thirty Three Lakhs Eighty Eight Thousand Two Hundred and Fifty Six Only) is due and payable by Defendant No.1-Company to the Plaintiff on account of materials received by the said Company, as mentioned in the Invoices. I, therefore, say that the amount claimed by the Plaintiff in Prayer Clause (a) is incorrect and therefore, the Defendant No. 1 is entitled for unconditional leave to defend the Suit.”

6 It is thus evident that the petitioners have admitted the liability of Rs. 33 lakhs odd. It appears that emails were also sent to the petitioners (defendant Nos. 2 and 3) by the respondent (plaintiff company) seeking the amount from them. The respondent/plaintiff has relied on copies of the invoices, transport receipts, etc. to show the liability of the

petitioners/defendants. As noted above, the petitioners in para 2 have not denied their liability to the extent of Rs. 33,88,256/- but have denied in para 3 that petitioners are liable to pay Rs. 56 lakhs odd.

7 Considering the aforesaid, the learned Judge has rightly granted conditional leave to defend the suit to the petitioners/defendants by passing the following order :

“ORDER

1. *Conditional leave to defend the suit is granted to defendants on depositing amount of Rs. 33,00,000/- jointly, in the Court within four weeks from the date of the order.*
2. *On depositing the aforesaid amount in the Court, the Registrar (Civil) is directed to deposit said amount in any Nationalized Bank initially for the period of one year and continue to renew the same for the like period till further order.*
3. *On depositing amount of Rs. 33,00,000/- as directed above the defendants are directed to file their written statement within further period of two weeks.*
4. *Summons for Judgment No.140/2017, is disposed off accordingly.”*

8 No infirmity can be found in the said order. Accordingly, the petition is dismissed.

9 Time is, however, extended by a period of six weeks from today to enable the petitioners to deposit the amount mentioned in the impugned order. Time to file written statement is also extended by a period of six weeks.

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

REVATI MOHITE DERE, J.