

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 13316 OF 2016**

M/s. Vihan Natural Health Care Pvt. Ltd. & Ors. ...Petitioners
Vs.
Khushal Parshram Ahuja ...Respondent

Mr. S.M. Oak i/b Mr. Sagar Joshi, Advocate for the Petitioners.

CORAM : A.S. GADKARI, J.
DATE : 11th MARCH, 2020.

PC. :

. Heard Mr. Oak, learned counsel for the petitioners.

Respondent is absent despite service.

2. By the present petition, the petitioners have impugned Order dated 14th July, 2016 passed below Exh.11 in Summary Suit No.21 of 2015, thereby allowing the application preferred by the petitioners/original defendants for granting leave to defend in said Summary Suit. By the impugned Order, the Trial Court has directed the petitioners/original defendants to raise their defence on deposit of Rs.12 Lakhs in the Trial Court within stipulated period. The record further indicates that, the said order was subsequently modified in Review Petition filed by the petitioners and the Trial Court has directed the petitioners to deposit the claim amount in the suit i.e. Rs.9,74,815.97 instead of Rs.12 Lakhs. It further appears that, the petitioners have paid a sum of

Rs.3,50,000/- and therefore the aforestated amount of Rs,9,74,815.97 is now due and payable as per claim raised in the plaint.

3. Mr. Oak, learned counsel for the petitioners submitted that, though the Trial Court has recorded a finding in paragraph no.6 that, there are triable issues involved in the present case, has erroneously directed the petitioners/original defendants to deposit entire claim amount in the Court.

4. It appears from the record that, the petitioners have prima facie made out a case for valid defence in their favour as contemplated under Order XXXVII of the Code of Civil Procedure and therefore, they deserve to be granted leave to defend the suit. However, after taking into consideration various aspects of the present case and in the interest of justice, the amount to deposit by the petitioners is hereby reduced and the petitioners are directed to deposit a sum of Rs. 4 Lakhs instead of Rs.9,74,815.97 during pendency of the said suit. Upon deposit of the said amount of Rs.4 Lakhs, the petitioners/original defendants are permitted to defend the said suit by raising defence as per provisions of law.

5. Petition is partly allowed in the aforesaid terms.

6. The said amount be deposited within a period of 3 weeks in the Trial Court, from the date of uploading of the present Order on the website of the High Court.

[A.S. GADKARI, J.]