

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

**WRIT PETITION NO. 1118 OF 2021**

Shrinath Industries & Anr.

..Petitioners

v/s.

Dujodwala Products Ltd.

..Respondent

Mr. Rajesh Datar for the Petitioners.

Mr. Uzair Kazi a/w. Sridhar Chari i/b.D.S.K. Legal for the Respondent.

**CORAM : ANUJA PRABHUDESSAI, J.  
DATED : APRIL 08, 2021.**

**P.C.**

1. With consent of the learned Counsel for the respective parties, heard finally at the stage of admission.

2. The Petitioner has assailed the order dated 6<sup>th</sup> March, 2018 whereby the learned Civil Judge, Senior Division, Panvel had granted leave to defend subject to deposit of Rs.4,22,115,82, being 60% of the claim amount, within a period of three months from the date of the order.

3. The Respondent was the Plaintiff and the Petitioners were

Defendants in a suit filed under Order 37 Rule 1 of CPC, and shall be hereinafter referred to as the Plaintiff and Defendants respectively.

4. Shri Datar, learned Counsel for the Defendants submits that the suit is not maintainable under the provisions of Order 37 Rule 1 of CPC. He submits that the Plaintiff has not complied with Rule 2 of Order 37. He further claims that the Defendants have raised triable issues and as such the learned Judge was not justified in granting conditional leave to defend.

5. Mr. Kazi, ld. Counsel for the Plaintiff states that the claim of the Plaintiff is based on invoices referred to in para 5 of the Plaint. He submits that there is a substantial compliance of the provisions of Order 37 Rule 2 CPC. He submits that the Defendants have failed to make out substantial defence and /or to prove that they have a substantial or reasonable defence and as such the trial court was justified in not granting unconditional leave to defend.

6. Before advertng to the facts of the case, it would be relevant to refer to the judgment of the Apex Court in ***IDBI Trusteeship Services Ltd. vs. Hubtown Ltd, (2017) 1 SCC 568*** wherein the Apex

Court, after considering the previous judgment on the issue has laid down the following principles as to grant of leave in summary suits;

*“18. Accordingly, the principles stated in paragraph 8 of Mechelec’s case will now stand superseded, given the amendment of O. XXXVII R.3, and the binding decision of four judges in Milkhiram’s case shall apply. Hence the following principles shall be observed while considering whether to grant leave to defend a summary suit:*

*(I) If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.*

*(ii) If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.*

*(iii) The question whether the defence raises a triable issue or not has to be ascertained by the court from the pleadings before it and the affidavit of parties and it is not open to it to call for evidence at that stage.*

*(iv) Even if the defendant raises triable issues, if a*

*doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.*

*(v) If the defendant raises a defence which is a plausible but improbable, the trial judge may impose conditions as to time or mode of trial as well as payment into court or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.*

*(vi) If the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith;*

*(vii) If any part of the amount claimed by the Plaintiff is admitted by the defendant to be due from him, leave*

*to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.”*

7. In the instant case, the Plaintiff is a company incorporated under the provisions of the Companies Act and is engaged in the business of manufacture and sell of Rosin, Camphor and Dipentene, having its manufacturing plant at Kumbhivali-Raigad.

8. The Defendants are traders in rosin camphor and carrying on business from Karnataka. The Plaintiff has averred that the Defendants had entered into a contract in the year 2007 under which they had agreed to buy Rosin, Camphor and Dipentene which were to be delivered by Plaintiff to the Defendant's business place at Doddapet, Chintamani, Kolar in Karnataka. It is the case of the Plaintiff that they had supplied to the Defendants the said products at the business place of the Defendants. The Plaintiff has relied upon the invoices dated 6.01.2011, 21.01.2011, 27.01.2011, 03.02.2011, 09.06.2011, 15.09.2011 and 18.12.2011 for total sum of Rs.10,62,765.50. Out of the said bill amount, an amount of Rs.9,74,385.75 was outstanding. The Defendants failed and

neglected to pay the balance amount of Rs.9,74,385.75 under one pretext or another. On 7<sup>th</sup> January, 2013 the Plaintiff forwarded to the Defendants statement of outstanding amount. The Plaintiff has placed on record copy of the statement of account at Exhibit H.

9. The Plaintiff has averred that the Defendants accepted the statement of account and agreed to make the payment in installments and had further requested to continue supply of goods. The Defendants having failed to make the payment, the Plaintiff by legal notice dated 3<sup>rd</sup> June, 2014 called upon the Defendants to pay the outstanding amount of Rs.9,63,526/-. The Defendants did not reply to the said notice, but issued cheques for Rs.1,00,000/-. The said cheque was dishonoured. Upon being informed, the Defendants made part payment in cash and vide letter dated 20.06.2014 assured to pay Rs.50,000/- per month. Since the Defendants failed to pay the balance amount, the Plaintiff once again by demand notice dated 5<sup>th</sup> January, 2015 called upon the Defendants to pay the balance amount of Rs.7,03,525.88, and further claimed an amount of Rs.1,25,000/- as compensation. The Plaintiff filed a suit for recovery of outstanding dues and compensation.

10. It is true that the Plaintiff has not mentioned that the suit is under the provisions of Order 37 of CPC. Nevertheless it is specifically mentioned immediately before the number of the suit that the suit is “Summary Suit”. It may be mentioned that the object of mentioning the provisions is to apprise the Defendant that the suit is filed under the provision of Order XXXVII of CPC. In the instant case, the Plaintiff has specified that the suit filed was a ‘Summary Suit’. There is substantial compliance with the provision and hence there is no serious deviation which has caused prejudice to the Defendants.

11. The Plaintiff has claimed an amount of Rs.7,03,525.88 based on invoices and the confirmed statement of account. The said claim falls within one of the classes of suits enumerated in Order XXXVII Rule 1(2) CPC. As regards the claim towards damages, it is well settled that the Plaintiff can at any time abandon or give up a part of the claim unilaterally and it is open to the Court to grant conditional leave to defend in respect of part of the claim and unconditional leave to defend for the remaining part of the claim. In the instant case, as regards the claim for Rs.7,03,525.88, in the

application for leave to defend, the Defendants have merely denied the averments made in the plaint, without raising any substantial defence. The Defendants have not disputed having received the goods delivered by the Plaintiff. The Defendants have also not raised any objection as regards the quantity or quality of the goods or price payable in respect of the said goods which were delivered by the Plaintiff. They have not responded to the Demand Notice and not disputed the amount mentioned in the Statement of Account. Having failed to raise the substantial or fair and reasonable defence in respect of the claim of Rs.7,03,525.88, the trial court was justified in securing interest of the Plaintiff in directing the Defendant to pay 60% of outstanding dues of Rs,7,03,525.88 as against the unpaid bills as per the books of account.

12. Under the circumstances, the Petition has no merits and is accordingly dismissed.

**(ANUJA PRABHUDESSAI, J.)**