

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3329 OF 2021

Single Point Source Exports Pvt. Petitioners
Ltd. & Ors.

Vs.

Cu-Built Engineers Pvt. Ltd. Respondents

Mr. Minesh K. Shah for Petitioners
Mr. V.K. Gupta for Respondents

Coram : NITIN W. SAMBRE, J.
Date : 26th JULY, 2021

P.C.:

1. In a Special Summary Suit being No.234 of 2018, the 2nd Joint Civil Judge, Senior Division, Pune has granted conditional leave to defend under Order 37, Rule 3(5) of Code of Civil Procedure thereby ordering the Petitioners to deposit an amount of Rs.34,80,495/-, within 30 days from the order.
2. The order impugned dated 16th June, 2021 is assailed by all three Defendants on the following grounds :

- (a) That the Directors ought not to have been impleaded as party-Defendants in their individual capacity and as such ought not to have been made liable for deposit of the amount;
- (b) The time was essence of the contract based on which the liability is sought to be established against the Petitioners and as such the default of the Respondents-Plaintiffs should have been appreciated;
- (c) There are series transaction between the parties. In settling the accounts opening balance in the year 2013 was subsequently adjusted and after making payment of substantial amount, without admitting, what can be at the most held to be outstanding is 15.17 Lacs.

3. So as to substantiate aforesaid argument, my attention is invited to the pleadings in the plaint so also the application for grant of

leave to defend i.e. Exhibit 23, the document i.e. purchase order and the extract of the accounts.

4. While countering aforesaid submissions, Mr. Gupta, learned counsel appearing for the Respondent-Plaintiff would support the order impugned.

5. I have considered the rival submissions.

6. It appears that the parties to the suit are in longstanding business relationship. The purchase order came to be issued on 14th February, 2017, whereas the delivery was effected by the Plaintiff-Respondent on 20th April, 2017 and the delivery was accepted without any protest.

7. In the aforesaid backdrop, the probable defence that the delivery was not within time and the material was of sub-standard quality, need not be appreciated at this stage of the proceedings.

8. Apart from above, Petitioner Nos. 2 and 3 are the Directors of a private limited Company. Considering said status of Petitioner Nos.2 and 3, their liability as Directors of Private Limited Company, they were justifiably impleaded as Defendants to the suit in question. As such said objection of the Petitioners does not hold any substance.

9. As far as settlement of the account is concerned, there are hardly any pleadings. The Petitioners indirectly accepted liability to the tune of Rs.15.17 Lacs, however, this Court is not required to go into the legality of the same particularly while granting leave to defend. The Court while exercising powers under Order 37, Rule 3(5) is required to deal with issue of strong defensible case. Though the Court of Civil Judge, Senior Division has observed that there is triable issue involved in the suit, however proceeded to direct the Petitioners to deposit an amount of Rs. 34,80,495/- in the light of above.

10. In the wake of observations made by this Court on the aforesaid three points in my opinion, the conditional leave to defend

ordered by the Court below is in tuned with requirement under Rule 3(5) of Order 37 of Code of Civil Procedure.

11. As such, no case for interference at this stage in extraordinary jurisdiction of this Court is made out. The Petition as such fails, dismissed.

12. The period for deposit of the amount as was ordered by the Court of 2nd Joint Civil Judge, Senior Division, Pune is extended by four weeks from today.

(NITIN W. SAMBRE, J.)