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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8143 OF 2019

KRUPAY TRADEPIPES PVT. LTD.

....PETITIONER

V/s.

AMIT B. MITTAL

.....RESPONDENT

Mr. Atul V. Singh for the petitioner

Mr. Rajiv Chavan Senior Advocate i/b Mr. Girish Kedia for respondent

CORAM : NITIN W. SAMBRE, J.

DATE: AUGUST 17, 2021.

P.C.:

1] In a summary suit initiated under Order 37 of Code of Civil Procedure, 1908 (Hereinafter referred to as 'C.P.C.' for the sake of brevity) summons for judgment came to be moved by respondent-plaintiff seeking decree for recovery of Rs. 29,51,504/- with interest @ 18% per annum towards steel goods supplied to the petitioner-defendant.

2] Court below while dealing with such prayer, passed an order

while exercising powers under Order 37 Rule 3(5) of C.P.C. thereby granting leave to defend subject to condition of deposit of Rs. 16 Lakhs within period of 15 days from the date of order which is questioned herein.

3] Counsel for the petitioner-defendant would urge that court below has erred in putting the petitioner to unreasonable conditions of deposit of Rs. 16 Lakhs on the ground that at the said stage, petitioner-defendant cannot be put to unreasonable condition of production of evidence so as to substantiate claim of strong defendable and genuine case. He would draw support from the Judgment of the Apex Court in the matter of **IDBI Trusteeship Services Limited Vs. Hubtown Limited (2017) 1 SCC 568** so as to substantiate the same. He would also invite attention of this Court to rival pleadings of the parties and the explanation tendered by the petitioner while seeking unconditional leave to defend.

4] I have appreciated the said contentions in the light of the observations made by the Court below. As against claim of Rs.

29,51,504/-, petitioner-defendant is put to a condition of deposit of Rs. 16 Lakhs. Admittedly, petitioner is facing prosecution under the provisions of Negotiable Instruments Act as the cheques alleged to have been issued in the transaction in question based on which suit is initiated were dishonored.

Court while dealing with prayer for grant of leave to defend can direct the defendant to deposit part of the amount involved in claim provided such amount can be prima-facie seem to be payable.

5] Petitioner though has tried to claim that cheques were issued in an earlier transaction i.e. dated 29/02/2016 whereas suit is preferred as against transaction dated 05/03/2016 and 06/03/2016, but for plea raised by the petitioner, there is hardly any convincing material to infer the same.

The contention of the Petitioner that he cannot be called upon to produce evidence in support of the claim of existence of strong valid defensible case, if considered, the least that was expected of the Petitioner-Defendant was to demonstrate from the pleadings and available material that there is a triable issue and the

Petitioner- Defendant has a strong case. In such a situation, the pleadings of the Petitioner, so as to establish his claim that he has a strong valid defendable case, has not been inferred or demonstrated.

6] The fact remains that invoice, dishonour of cheques and other material relied on by the Respondent-plaintiff for the purpose of issuance of summons for judgment. That being so, condition to which the petitioner is put by the learned court while exercising powers under Order 37 Rule 3(5) of C.P.C. appears to be reasonable and justified. The condition on which petitioner is granted leave appears to be reasonable considering the fact that petitioner has failed to establish a strong, defendable and genuine case. No interference is called for in extraordinary jurisdiction. Petition as such fails, stands dismissed.

7] Time to deposit an amount of Rs. 16 Lakhs ordered by the Court is extended by 4 weeks from today.

[NITIN W. SAMBRE, J.]