

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

WRIT PETITION NO. 8729 OF 2019

M/s. Hawa Valves (India) Pvt. Ltd.
through Director.

.. Petitioner

v/s.

Naseem Ahmad Shaikh

..Respondent

Mr. Ajit Anekar and Mr. Prithvi Aringale i/b. Auris Legal for the
Petitioner.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 30th MARCH, 2021.**

P.C. :

1. The Petitioner herein has assailed order dated 7th September, 2018 whereby the learned Civil Judge, Thane, has declined to grant an unconditional leave to defend the suit and has granted conditional leave subject to deposit of an amount of Rs.42,06,736/- or bank guarantee equivalent to the said amount.

2. Shri Anekar, learned Counsel for the Petitioner submits that the Respondent herein had issued inflated invoices and this fact has been accepted by the trial Court. He therefore contends that this is a triable issue and since the Petitioner has substantial defence or atleast fair and reasonable defence, the trial Court ought to have granted unconditional leave to defend the suit. In support of his contention, he

has relief upon the judgment of the Apex Court in ***IDBI Trusteeship Services Ltd. vs. Hubtown Ltd, (2017) 1 SCC 568.***

3. I have perused the records and considered the submissions advanced by the learned Counsel for the Petitioner. Before advertng to the facts, it would be relevant to refer to the decision in IDBI Trusteeship (supra) 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 Accordingly, the principles stated in paragraph 8 of Mechelec’s case will now stand superseded, given the amendment of O. XXXVII R.3, and the binding decision of four judges in Milkhiram’s case shall apply.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.”

4. In the instant case, the Plaintiff has filed a suit under Order 37 Rule 1 of CPC for recovery of Rs. 84,13,473/- being the price of goods supplied to the Defendant. The Defendant has filed application under Order 37 Rule 3 of CPC seeking unconditional leave to defend the suit mainly on the ground that the plaintiff had issued inflated invoices.

5. It is not in dispute that the Plaintiff is dealing in supply of industrial construction equipment and materials. The Defendant had placed purchase orders with the Plaintiff company for supply of certain goods. Accordingly, the Plaintiff supplied goods and raised invoice for Rs.76,03,368/- from March 2015 to September 2015. The said amount was required to be paid within 90 days, failing which the Plaintiff was entitled for interest @ 18% per anum. The Defendant has not paid the said amount on the ground that the invoices are inflated.

It is pertinent to note that the Defendant had received the goods mentioned in the said invoices without raising any dispute as to the quality and the quantity of the goods. As rightly observed by the trial Court, the defendant had not disclosed in any of the correspondence with the Plaintiff, the actual market value of the material supplied by the Plaintiff and had also not offered to pay to the Plaintiff the actual value of the material supplied. It is in these circumstances, the trial Court has held that the Defendant has failed to raise the substantial defence and is therefore not entitled for unconditional leave to defend the suit. It may be noted that the trial Court, upon considering the material on record has held that the defence raised is not improbable and therefore granted unconditional leave by directing the defendant to deposit Rs.46,06,736/- or to furnish bank guarantee of equivalent amount as condition precedent. In my considered view, the trial Court has exercised the discretion judiciously and has tried to protect the interest of the Plaintiff and has further ensured that none of the parties to the suit suffer avoidable prejudice. The impugned order is just, fair, equitable and is in tune with the object of the provision. The order does not suffer from any jurisdictional error and does not warrant any interference. The Petition has no merits and is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)