

\$~10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision: 7th December, 2021

+

CM(M) 484/2021

SANJEEV SHARMA

..... Petitioner

Through: Mr. Surender Gupta & Mr. Rahul
Ranjan, Advocates.

versus

NATURE ENTERPRISES

..... Respondent

Through: Mr. Manmohan Singh with Mr.
Sourabh Singh Tomer, Mr. Varun
Mudgil & Mr. Rakesh Kumar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

1. This petition under Article 227 of the Constitution of India impugns the order dated 03rd February, 2021 passed by the Court of Civil Judge-01, West, Tis Hazari Courts, Delhi in civil suit being CS SCJ No.521/2020, whereby unconditional leave to defend has been granted in favour of the respondent/defendant (hereinafter 'respondent').

2. Notice was issued in the said petition on 28th July, 2021 and the suit proceedings were stayed. On the next date of hearing, parties were granted liberty to file written submissions in respect of the issue in the present

petition. Both the parties have filed written submissions.

3. Before dealing with the contentions of the parties, it is deemed appropriate to detail the facts preceding the filing of the present petition.

3.1 The suit from which the present petition arises was filed by the petitioner/plaintiff (hereinafter 'petitioner') against the respondent under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) for recovery of Rs.1,94,586/-.

3.2 Summons were issued in the suit on 10th July, 2020 and the respondent entered appearance.

3.3 In August, 2020, the petitioner filed affidavit under Order XXXVII Rule 3(4) of the CPC for issuance of summon for judgment.

3.4 Thereafter, the respondent filed application for leave to defend under Order XXXVII Rule 3(5) of the CPC, whereby the respondent claimed that (i) the Trial Court does not have pecuniary jurisdiction to adjudicate the dispute; and, (ii) the goods in question were old and unfit for use.

4. Vide the impugned order dated 03rd February, 2021, the Trial Court, while relying on the judgment in *Mechelec Engineers & Manufacturers Vs. Basic Equipment Corporation*, (1976) 4 SCC 687 held that both the issues raised in the leave to defend application are triable issues. Accordingly, unconditional leave to defend was granted in favour of the respondent.

5. Counsel for the petitioner draws attention of the Court to paragraph 14 of the impugned order to demonstrate that the unconditional leave to

defend has been granted on account of two factors, (i) that Civil Judge did not have the pecuniary jurisdiction to decide the suit as the claim amount was above Rs.3,00,000/-; and, (ii) that the stocks supplied by the petitioner to the respondent were old and not fit for use.

6. Counsel for the petitioner contends that there is no merit in both the aforesaid grounds considered by the Trial court in granting unconditional leave to defend. It is submitted that the principal amount claimed in the suit is Rs.1,94,586/-. The remaining amounts of interest and costs are only incidental to the principal amount and therefore, should not be counted for the purposes of determining pecuniary jurisdiction. It is further stated that even if the interest amount is calculated, the same would be Rs.86,000/- and therefore, the total amount claimed will still be below Rs.3,00,000/-.

7. As far as the supply of old goods are concerned, it is submitted that the last of such supplies was made in 2018 and the objection with regard to quality of the goods was taken only for the first time in the application for leave to defend filed on behalf of the respondent in August, 2020. Accordingly, he places reliance on Section 42 of the Sale of Goods Act, 1930 to contend that the goods are deemed to have been accepted by the respondent. Reference in this regard is made to the judgment of this Court dated 11th May, 2018 in RFA No.401/2018 titled ***United Electronics & Anr. Vs. Compuage Infocom Ltd. & Anr.***

8. Counsel appearing on behalf of the respondent submits that the petitioners have claimed three amounts in the suit, being (i) principal amount of Rs.1,94,586/-; (ii) interest of Rs.86,000/-; and, (iii) costs of Rs.40,000/-, and the aggregate of these amounts i.e, Rs.3,20,586 is over Rs.3,00,000/-. As regards the other grounds, it is contended that the

respondent had not placed any order with the petitioner in respect of the said goods and the petitioner had supplied the goods on his own and the said goods were old and unfit for use.

9. I have heard the counsels for the parties and perused the record.

10. I find merit in the submission of the counsel for the petitioner that costs cannot be part of the amount to be determined for calculating pecuniary jurisdiction. Costs are purely on the discretion of the Court and therefore, cannot be taken to be part of the amount claimed. Reference is made to Section 35 of the Code of Civil Procedure, 1908 (CPC), which specifically provides that costs shall be incidental in all suits and shall be on the discretion of the Courts.

11. As regards the contention on behalf of the respondent that the goods were supplied by the petitioner without any order from the respondent, nothing has been filed on record to suggest that the respondent did not want to take the goods or that the respondent wanted to return the goods upon delivery. The objection with regard to the quality of the goods was taken for the first time only in the leave to defend application.

12. In ***IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd.***, (2017) 1 SCC 568, the Supreme Court has observed that the judgment in ***Mechelec Engineers & Manufacturers*** (supra) stands superseded in light of the 1976 amendment to Order XXXVII Rule 3 of the CPC (Act 104 of 1976). The principles laid down in ***IDBI Trusteeship Services Ltd.*** (supra), which govern the grant of leave to defend under Order XXXVII of the CPC are as follows:

“17.1. 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.

17.2. 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.

17.3. 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.

17.4. If the defendant raises a defence which is 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.

17.5. 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.

17.6. 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.”

13. Applying the aforesaid principles in the facts and circumstances of the present case, the present case would fall under paragraph 17.3 of the aforesaid judgment, wherein it is stated that the defendant may have raised triable issues, however, there are doubts on the genuineness of the said

triable issues. Therefore, it is not a case where unconditional leave should have been granted.

14. Accordingly, the impugned order is modified to the extent that the leave granted to the respondent would be subject to deposit of 50% of the principal amount by the respondent with the Trial Court within two months from today.

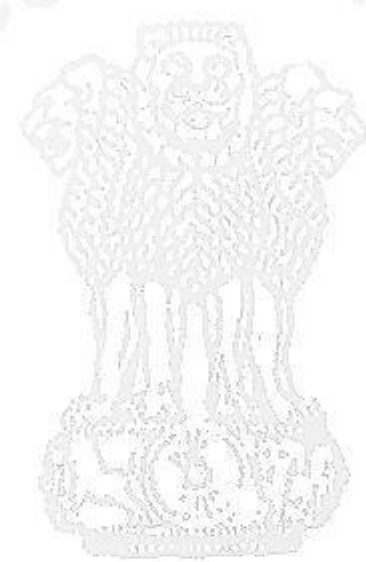
15. The Trial Court is requested to expeditiously decide the suit.

16. The petition is disposed of in above terms.

AMIT BANSAL, J

DECEMBER 7, 2021

ak



नित्यमेव जयते