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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 882 OF 2022**

MR. GAJANAN R. HARD

.... Petitioner.

V/s

M/S. YARN TECH.

.... Respondent.

**WITH
WRIT PETITION NO. 883 OF 2022**

MR. GAJANAN R. HARD

.... Petitioner.

V/s

THE ACME THREAD CO. PVT. LTD.

.... Respondent.

Mr. Dashrath S. Hatle a/w Deepak Jamsandekar for the Petitioner.

CORAM: NITIN W. SAMBRE, J.

DATE: APRIL 08, 2022

P.C.:-

1] Both these Petitions can be conveniently decided by this common order.

2] In a summary suit for recovery being Summary Suit No.490 of 2018, Petitioner took out proceedings under Order 37 Rule 3 for rejection of Summons for Judgment and grant of leave to defend. By impugned order passed on 8th October, 2021, Court below granted conditional leave to defend, thereby directing Petitioner/Defendant to deposit principal amount of Rs 18,09,763/-. Summons for Judgment as such was disposed of.

3] While assailing the aforesaid order, Counsel for the Petitioner would invite attention of this Court to the incident of fire that took place in the premises of the present Petitioner/Defendant on 3rd June, 2017. He would claim that said incident of fire could be substantiated from the copy of FIR which is produced on record and as such he would urge that premises remained closed for quite a long time for the purpose of valuation of insurance claim and Petitioner has not operated his business from the said premises. According to him, communication dated 24th July, 2017 was addressed at the said premises and as such he has not received the same. In addition, his contentions are, as business transaction between the parties is of trading of yarn and the Petitioner has already returned the goods vide invoices dated 13th July 2016 which are produced on record at pages 118 and 119, there is no material on record to infer admitted or acknowledged liability of the amount of Rs 18,09,763/-. Relying on the judgment of IDBI case, his contentions are, Petitioner has strong defensible case and the Petitioner can succeed in the suit, which may be dismissed.

4] I have appreciated the said submissions.

5] Court below while granting conditional leave to defend has observed that Petitioner has acknowledged the Accounts for a period from 1/4/2015 to 28/2/2017 which depicts the aforesaid liability about the Petitioner having acknowledged receipt of the said

Accounts. In absence of material on record to infer that prior in point of time of filing of the suit, the said Accounts were disputed by the Petitioner, the Court below was justified in passing the order impugned. In view of observations in para 13 of the order impugned, it can be inferred that the Petitioner has not only acknowledged receipt of copy of the Accounts but there is enough material to infer liability of the Petitioner, as same was not objected to.

6] Though the Petitioner has claimed that in fire that occurred in premises, entire Accounts and other Documents were destroyed, fact remains that documents which are produced in the form of invoices are from the custody of the Petitioner. These documents do not bear any acknowledgment from the Respondent/Plaintiff about return or receipt of the goods.

7] In the aforesaid backdrop, Court below, in my opinion, is justified in granting leave to defend, thereby directing the Petitioner/Defendant to deposit the said amount.

8] In that view of the matter, no case for interference in extraordinary jurisdiction is made out. Both the Petitions as such fail and same stand dismissed.

(NITIN W. SAMBRE, J.)