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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1473 OF 2022**

Sidhivinayak Hospitality Services	Petitioner
V/s	
M/s. Keshar Agro Food Products	Respondent

Mr. Soumitra Gokhale for the Petitioner.
Mr. Sagar Kursija for the Respondent

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 23, 2022

P.C.:-

1] This Petition is by the Defendant to Summary Suit No.93 of 2017. It is the case of the Defendant that by an application under Order 37, Rule 3, sub-rule (5) of the Civil Procedure Code, he has made out a case for grant of unconditional leave to defend, which the Court below has failed to consider. His further contention is, Court below has calculated interest @ 18% per annum and has issued directions to deposit the the principal amount with interest without recording any finding on the said issue.

2] Learned Counsel for the Respondent/Plaintiff would support the order impugned and sought dismissal of the Petition.

3] Considered rival submissions.

4] Summary suit of the Respondent/Plaintiff being Summary Suit No.93 of 2017 is based on alleged transactions, as occurred between the Petitioner and the Respondent from 1st July 2015 to 19th December, 2015. It is claimed by the Respondent/Plaintiff that it has supplied grocery items to the Defendant who is in the business of catering in between 1st July, 2015 to 19th December, 2015 under various invoices, details of which are already mentioned in the suit. It is alleged that total amount of Rs 28,89,773/- is outstanding against the Petitioner/Defendant. The Respondent/Plaintiff has categorically placed on record documents so as to prima facie substantiate said claim.

5] In application for grant of leave to defend, Petitioner has come out with a case of non-supply of billed material, supply of short quantity, poor quality, difference in transportation charges etc. Apart from above, other plea raised by the Petitioner is that the amount of Rs 1,46,035/- was released vide cheque No. 069977 dated

27/03/2016 towards full and final settlement. As such, it is claimed that since triable issue is already demonstrated, Court below should have granted unconditional leave to defend.

6] I have considered the said submissions.

7] It is not in dispute that Summary Suit of Respondent/Plaintiff in categorical terms has stated the basis for suit claim. The Petitioner/Defendant, except denial, has not come out with specific plea as to protest lodged on the issue of probable defence as narrated hereinabove viz. quality, quantity etc. Apart from above, but for vague denial, Petitioner/Defendant is unable to demonstrate that there is strong triable issue. Rather, material on record depicts that order of the court below directing the Petitioner to deposit the amount is justified in the facts of the case, particularly having regard to defence raised by the Petitioner and the evidence in the form of documents.

8] In that view of the matter, directions of the Court below to the Petitioner to deposit the amount cannot be interfered with. However,

while parting, it is required to be noted that principal claim of Respondent/Plaintiff is of Rs 28,89,773/- and Respondent/Plaintiff has claimed interest @ 18% per annum. As such, Court below has directed deposit of amount of Rs 35,85,175/-.

9] At the outset, it is required to be noted that the amount of interest, that too @ 18% per annum, ought not to have been granted on the principal amount for the purpose of putting the Petitioner/Defendant to the condition of deposit of amount as in ordering the same, there is no justifiable reason coming forth. Once the principal amount is secured, Petitioner/Defendant deserves to be granted conditional leave to defend. As such, but for modifying the figure from Rs 35,85,175/- to Rs 29,00,000/-, I hardly see any reason which warrants interference in extraordinary jurisdiction.

10] Petition is partly allowed in the above terms and disposed of.

(NITIN W. SAMBRE, J.)