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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 1500 OF 2022**

ARDESHIR B. CURSETJI AND
SONS LIMITED

....PETITIONER

V/s.

R.R. ROADWAYS PRIVATE LIMITED

.....RESPONDENT

Mr. Sunny Shah a/w Mr. Naresh Patani i/b Ashwin Ankhad &
Associates for the Petitioner

Mr. Abhishek Venkatraman a/w Burzin Somandy i/b Tejaswita
Nalawade for Respondent

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 17, 2022.

P.C.:

- 1) By consent, matter is taken up for final disposal at admission stage.
- 2) Shri Shah learned counsel for the Petitioner would urge that challenge in the petition is to the order dated 17/01/2022 passed by City civil Court Mumbai on summons for Judgment in Summary Suit No. 3914 of 2013 whereby Petitioner-Defendant is put to condition of deposit of amount of Rs. 38,10,000/- with interest at the rate of 10% per annum.

- 3) Facts necessary for deciding the present Petition are as under.
- 4) Respondent-Plaintiff alleged that they are fleet owners operating business of cargo transport. It is alleged that as contract between the parties to the Suit it was agreed that Rs. 2000/- per day per trailer were payable towards detention charges in respect of cargo weight upto 22 MT, in between weight 23 to 28 MT at the rate of Rs. 3000/- per day per trailer and between 28 to 32 MT, at the rate of Rs. 4000/- per day per trailer. Out of the total dues which are receivable by the Plaintiff from the Defendant based on work order, it is claimed that amount of Rs. 8,44,000/- remained to be paid in addition to detention charges resulting into filing of the suit for recovery of the amount. In response to summons for Judgment, Petitioner-Defendant took out an Application for grant of unconditional leave to defend which is allowed subject to deposit of amount as mentioned in the impugned order. As such this petition.
- 5) By inviting attention of this court to the pleadings in the Plaint, counsel for the Petitioner-Defendant Shri. Shah would urge that perusal of the pleadings in the Plaint would reveal that same is based on implied contract. In absence of absolute, express, concluded

contract, it is not open to the Court below to refuse the prayer for grant of leave to defend.

6) He would invite attention of this court to pleadings in the Plaint to that effect particularly at para 11. He would further claim that since from the pleadings and the documents on record, the amount payable cannot be ascertained or readily calculable, the court below ought not to have put the Petitioner to a condition of deposit of the amount. He would further claim that there is strong defensible case in favour of the Petitioner-Defendant . He would further urge that Court below has committed an error in observing that the Petitioner shall also deposit amount of interest at the rate of 10% per annum. So as to substantiate the said claim, Petitioner has drawn support from the Judgment of this court in the matter of **Jyotsana K. Valia and Ors. Vs. T.S. Parekh Co. and Ors**¹ and also from the Judgment of Apex Court in the matter of **IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd.**² He would specifically urge that amount which is directed to be deposited so as to facilitate the leave to defend is not ascertainable as nowhere it can be readily ascertainable or

¹ 2007 (4) Mh.L.J. 517

² 2017 (1) SCC 568

calculable.

7) While countering the aforesaid submissions, counsel for Respondent has supported the order impugned. According to him, work order which is in the form of contract in express terms provides for payment of detention charges and there is communication on record to infer that liability was admitted by Petitioner-Defendant.

8) Considered rival submissions.

9) It appears that suit claim is based on various work orders which are produced along with Plaint. For the purpose of appreciation, if the work order dated 19/09/2011 issued by Petitioner to the Respondent Plaintiff is considered, it specifically provides for detention charges and the parties have agreed to conduct themselves in accordance with terms mentioned in annexure 'A'. Annexure 'A' in express terms provides for payment of detention fee which can be claimed by Respondent-Plaintiff.

10) Respondent has specifically come out with a case in the Plaint that of the two contracts which are executed by the Respondent for the Petitioner-Defendant i.e. at Mumbai and Vishakhapatnam, there was bifurcation, Plaintiff vide email dated 3/04/2012 provided entire

details about payment. Said email dated 3/04/2012 forwarded by Respondent-Plaintiff was responded to by Petitioner-Defendant vide email dated 07/05/2012 wherein assurance was given that amount will be released once same is received from their customers.

11) As far as the issue about payment of detention charges is concerned, email communications dated 22/09/2011 inter-se between the parties in categorical terms establishes the acceptance of the liability. Rather the demand made by the Respondent-Plaintiff was specifically communicated to the Petitioner-Defendant .

12) As far as the pleadings in para 9 and 10 of the Plaint is concerned which relates to aforesaid emails, there is no specific denial by the Defendant to the same.

13) Respondent-Plaintiff has in tabular form already provided entire calculations which were given to Petitioner-Defendant claiming recovery of transport and detention charges. Once vide email there was assurance that amount will be paid, question is whether Court below was justified in quantifying the amount.

14) The fact remains that vide email dated 7/05/2012, Petitioner has admitted his liabilities to pay the amount. The amount to be

deposited by Petitioner as mentioned in the order impugned is based on calculation which are provided and exchanged between the parties. In view of non specific denial and the admission by the Petitioner that they shall be releasing the amount, in my opinion the court below was justified in directing the Petitioner to deposit the amount of Rs. 38,10,000/-. However, the court below has exceeded its jurisdiction in directing the payment with interest at 10% per annum, particularly when agreement/work order does not specifically provide so.

15) From the aforesaid observations, it is quite apparent that there exist a contract and admission of liability by the Petitioner. The debt to the extent of amount mentioned in para 10 of the Plaint can be ascertained and rightly so in the impugned order calculated @ of Rs. 2000/- per vehicle per day towards detention charges.

16) Apart from above, other communications vide MOU dated 24/07/2012 which provides for proof of payment made to the broker was also provided by Respondent.

17) In that view of the matter, since the Petitioner is directed to deposit the amount at the rate of Rs. 2000/- towards per trailer per

day towards detention charges which is the loan derived provided in the work order, I hardly see any reason which warrants interference in the order impugned. Once the Respondent-Plaintiff has demonstrated that there is concluded contract and the terms therein was not honoured, as liability to pay detention charges was admitted, and not discharged. The court below was justified in reaching to a conclusion of ascertainment of debt based on the documents.

18) In the aforesaid background, support drawn from the Judgment in the matter of **Jyotsna K. Valia and IDBI Trusteeship Services Ltd.** [cited supra] will be of hardly any consequence.

19) That being so, no case for interference is made out. The only modification in the order impugned which is called for is deposit of amount of Rs. 38,10,000/- by 30/04/2022 subject to which leave to defend is granted in favour of the Petitioner-Defendant. Needless to clarify that Petitioner-Defendant is not liable to deposit the amount of interest at this stage of the proceedings.

20) Petition stands partly allowed in the above terms.

[NITIN W. SAMBRE, J.]