

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 7277 OF 2019**

K.D.Enterprises

.. Petitioner

Versus

Suhas Textiles

.. Respondent

.....

- Mr. Manoj A. Patil i/by Nilabh N. Toshnival for Petitioner

CORAM : MILIND N. JADHAV, J.**DATE : NOVEMBER 30, 2022.****P.C.:**

1. Heard Mr. Patil, learned Advocate for Petitioner.
2. Perused the impugned Order dated 20.04.2019. Paragraph No.3

of the said order records that :-

“3. Heard both sides at length. In the present case, I have passed specific order below Exh.15 and directed the defendant to furnish the security for the sum of Rs.9,26,039/- and subject to the security defendant is liberty to raise the defence by filing WS. On perusal of the present application it appears that, the defendant wants to say that the cloth goods under Invoice No. 34 of Rs.3,73,521/- and Invoice No. 13 of Rs.7,47,726/- i.e. total Rs.11,21,247/- as a security for the compliance of the order below Exh.15. But, these goods are not within the control of the Court. Moreover, it is difficult to appoint any Commissioner to look over the goods. It is not the case of the defendant that, against the said goods the bank has ready to furnish the bank guarantee. Hence, at this juncture the application of the defendant appears to avoid to furnish the security. Moreover, I have already observed at para 5 of the order below Exh.15 that, there is no any document filed by the defendant about the acceptance of the debit note of Rs.6,64,066/- by the plaintiff. Moreover, there is no any notice or any document produced by the defendant since 26/05/2017 that the alleged goods were sub-standard goods. Hence, there is no merit in the application. Hence, I pass the following order -

Order

- 1) The application is rejected.”

3. The learned Trial Court while passing the impugned order had noted that Defendant was not ready to furnish the bank guarantee.
4. Today, Mr. Patil fairly submitted that defendant shall furnish the bank guarantee with respect to the desired amount as security. However, he has prayed for 4 weeks. Defendant is permitted to furnish the bank guarantee within a period of 4 weeks before the Trial Court.
5. Defendant to appear before the Trial Court tomorrow i.e. 01.12.2022 at 12:00 noon and take appropriate directions.
6. In view of the impugned order dated 20.04.2019 stands quashed and set aside.
7. Writ Petition is disposed of.

[MILIND N. JADHAV, J.]

SONALI
SATISH
KILAJE

Digitally signed
by SONALI
SATISH KILAJE
Date:
2022.12.01
18:19:28 +0530