

BDP-SPS-TAC

BHARAT
DASHARATH
PANDIT

Digitally signed
by BHARAT
DASHARATH
PANDIT
Date: 2022.04.01
18:27:42 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8919 OF 2009**

Alphabetics Business Machines
Private Limited

.... Petitioner.

V/s

The Zilla Parishad Nashik

.... Respondent.

Mr. M. L. Patil for the Petitioner.

Ms. Chaitrali A. Deshmukh for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: MARCH 31, 2022

P.C.:-

1] Heard Mr. Patil, learned Counsel appearing on behalf of the Petitioner at length. According to him, once contract is assigned by Principal in favour of the Petitioner against the Respondent and liability *inter se* between the Principal and Respondent/Defendant is admitted qua a concluded contract, Court below committed an error in granting unconditional leave to defend.

2] Ms. Chaitrali Deshmukh, Counsel for the Respondent/Defendant would support the order by relying on judgment of this Court in the

matter of *Standard Chartered Bank Vs. India Fintrade Ltd.* reported in **2008 SCC OnLine Bom 1076**.

3] Appreciated submissions.

4] There is no concluded contract *inter se* between the Petitioner/Plaintiff and Respondent/Defendant. Petitioner is claiming his right to recover the amount through third party in whose favour it is alleged that there was concluded contract. In that view of the matter, it cannot be held at this stage that there is admitted debt *inter se* between the Petitioner and Respondent. Appropriate support can be drawn from the judgments of the Apex Court in the matter of *IDBI Trusteeship Services Limited vs. Hubtown Limited* reported in **(2017) 1 SCC 568** so also in the matter of *Jyotsna K. Valia vs. T.S. Parekh and Co.* reported in **2007 (4) MhLJ 517**. Even if we consider that there was implied contract through third party viz PCS Industries Limited in favour of the Petitioner by the Respondent, such a contract cannot be formed to be the basis for refusing unconditional leave to defend.

5] That being so, no case for interference is made out. Petition as such fails and same stands dismissed.

6] As prayed by Mr. Patil, learned Counsel for the Petitioner, in case if motion is made for transferring the suit to Commercial Court, this Court expects the Trial Court to deal with the same expeditiously.

(NITIN W. SAMBRE, J.)