

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4886 OF 2023

Chetan Badani ... Petitioner

V/s.

M/s Ledvance Pvt. Ltd. (earlier known
as Osram India Pvt. Ltd.) ... Respondent

**WITH
INTERIM APPLICATION NO.3633 OF 2023**

Chetan Badani ... Applicant

In the matter between

Chetan Badani

V/s.

M/s Ledvance Pvt. Ltd. (earlier known
as Osram India Pvt. Ltd.) ... Respondent

Mr. Bernado Reis a/w Mr. Krishna Yadav i/by Arun
Sapkal & Co., for petitioner.

Ms. Ashlesha Modak i/by Auris Legal, for respondent.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 16, 2023

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner is original defendant in summary suit is challenging order granting additional leave to defend subject to deposit of Rs.10 lakh with the plaintiff. The respondent is original plaintiff who filed suit for recovery of Rs.62,85,735/- along with interest @ 24% per annum. The suit is based on invoices accepted

by the defendant. It is not in dispute that as per invoices goods were supplied to the defendant. Only defence raised by the defendant is that the earlier company which supplied goods to the defendant has not filed suit. The suit is filed by the new company with whom defendant has no privity of contract. The second defence is that the plaintiff supplied additional goods to the defendant and recovered additional amount which plaintiff was not entitled to recover.

2. The Trial Court granted conditional leave recording a finding that though the defendant has failed to raise positively good defence, the issues raised by the defendant requires trial. The Trial Court, therefore, directed defendant to deposit Rs.10 lakh within two months.

3. I have perused affidavit-in-reply filed by the defendant to Summons for Judgment. In paragraph 7, the defendant has raised following defence:

“...Accordingly I had business transactions with M/s. Osram India Pvt. Ltd. Who failed and neglected to settle the account by to collect the additional goods and credit the amount. In the meantime the said M/s. Osram India Pvt. Ltd., have been changed with the new name M/s. Ledvance Pvt. Ltd., i.e. the present plaintiff in the suit. It is pertinent to note that it is admitted position that M/s. Osram India Pvt. Ltd., is being now operating in the name of plaintiff co. meaning thereby the old company is continue the

business under the new name and the assets and liabilities have been taken over by the plaintiff co. I say and submit that I continue the business relationship with the plaintiff with a bonafide impression that old outstanding account would be settle by the plaintiff which is evident from the correspondence exchanged between me and the plaintiff.”

4. On perusal of defence raised, it appears that defendant has accepted the fact that name of the original company was changed with the plaintiff’s name. It is also stated that the assets and liabilities of the old company has been taken over by the plaintiff company.

5. In so far as the next defence of additional goods being supplied is concerned, it is unrelated to the suit claim and, therefore, it has no bearing on the suit plaint.

6. Learned Advocate for the petitioner submitted that the order directing payment to the plaintiff be modified to make it an order of depositing in Court.

7. However, it is made clear that, if the plaintiff ultimately fails in the suit, the Trial Court at the time of passing of decree shall consider passing appropriate order of refund of amount directed by the impugned order.

8. It is made clear that the observations made above are only in the context of grant of leave, the Trial Court shall not be influenced by the observations while deciding the suit and shall pass order on merits of the suit.

9. With this clarification, the writ petition stands disposed of. No costs.

10. In view of disposal of writ petition, nothing survives in the interim application. Hence, the interim application stands disposed of.

(AMIT BORKAR, J.)