

Nikita

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

**WRIT PETITION NO.12329 OF 2023
WITH
INTERIM APPLICATION NO.2635 OF 2023**

NIKITA
KAILAS
DARADE
Digitally signed by
NIKITA KAILAS
DARADE
Date: 2023.10.11
17:57:42 +0530

Balu Hospitality Limited, Thr. Directors
and Ors. ... Petitioners

V/s.

Faridi Impex Pvt. Ltd. Thr. C.E.O. Ajaz
Faridi ... Respondent

Mr. Drupad Patil, a/w Mr. Ishwar Nankani a/w Ms.
Bhakti Jain i/b Ms. Nankani & Associates for the
Petitioners.

Mr. Abhishek Patil, for Respondents.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 11, 2023

P.C.:

1. By this petition under Article 227 of the Constitution of India the petitioner/original defendants in summary suit is challenging order dated 7th January 2023 directing defendant to deposit entire suit claim within two months from the date of the order.
2. The suit claim is based on invoices raised for supply of goods. According to plaintiff, the defendant had placed orders from time to time and goods were delivered however despite raising of invoices, defendant failed to pay the amount.
3. The defendants filed affidavit-in-reply to summons for

judgment and raised dispute about receipt of goods.

4. The Trial Court in paragraph No.9 recorded a finding that plaintiff has failed to produce delivery challan to show that goods were delivered. The tax invoices does not bear acknowledgment from defendant No.1. Therefore, the Court recorded a finding that it cannot be ascertain whether goods were supplied to defendant by the plaintiffs. The ledger account maintained by the plaintiff has not been confirmed by the defendant. Based on aforesaid findings, in my opinion, the Trial Court ought to have granted unconditional leave to defend. Hence following order:

a) Clause 2 of the impugned order is hereby set aside to the extent of condition depositing amount of Rs.5,53,868/, within two months from the date of order.

b) It is clarified that the defendant is entitled to leave to defend unconditionally and is permitted to file written statement.

5. With this modification the writ petition stands disposed of.

6. In view of the disposal of the writ petition, interim application stands disposed of as infructuous.

(AMIT BORKAR, J.)