

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
IN ITS COMMERCIAL APPELLATE DIVISION
INTERIM APPLICATION NO.4097 OF 2023
IN
COMMERCIAL APPEAL FROM ORDER (ST.) NO.10642 OF 2023**

Iolite Softwares Private LimitedApplicant/Appellant

Vs.

R.K. Dewan and CompanyRespondent

Mr. Vishal Pattabiraman a/w. Mr. Jayesh Mestry for applicant.
Mr. Aditya Chitale a/w. Mr. Ameet Deshpande, Mr. Sumedh Ruikar and
Mr. Prashant Shetty i/b. R.K. Dewan Legal Services for respondent.

**CORAM : K. R. SHRIRAM &
RAJESH S. PATIL, JJ.
DATED : 25th APRIL 2023**

PC. :

INTERIM APPLICATION NO.4097 OF 2023

- 1 The interim application is to condone the delay of 7 days.
- 2 Having considered the averments in the affidavit, keeping open the rights and contentions of respondent, the delay is condoned.
- 3 Interim application disposed accordingly.

**COMMERCIAL APPEAL FROM ORDER (ST.) NO.10642 OF 2023
WITH
INTERIM APPLICATION (ST.) NO.10645 OF 2023**

- 4 By the impugned order the District Court has in effect granted prayer clause – (b) of the suit.
- 5 The fact is, admittedly respondent (original defendant) has supplied a software to respondent (original plaintiff) pursuant to an

undated agreement of April 2016, copy whereof is at page 53 of the appeal memo. It is respondent's case that appellant has not fulfilled its obligations under the agreement. It is appellant's case that respondent has not fulfilled its obligations under the agreement.

In the plaint, in paragraph 6 the terms of payment is mentioned but paragraph 7 of the plaint indicates that this terms of payment has not been complied with by respondent. The agreement also provides that appellant warrants that for a period of 365 days from 15th June 2016, appellant will furnish full support in rectification and modification of defects in material and workmanship required under the normal use. The 365 days period got over in 2017. The agreement also provides for an annual maintenance contract of Rs.2,25,500/- per annum after the 365 days is over. It is appellant's case that even this amount has not been paid. In our view, limitation will also be an issue.

6 This matter, therefore, requires consideration.

7 Appeal admitted.

8 Ad-interim in terms of prayer clause – (b) in Interim Application (St.) No.10645 of 2023 is granted and the same reads as under :

(b) that pending the hearing and final disposal of the present Interim Application, this Hon'ble Court be pleased to stay the impugned order dated 21/01/2023 passed by the Hon'ble District Court, Pune in Exhibit – 5 Application in Commercial Suit No.14 of 2021.

9 Affidavit in reply to the interim application to be filed and copy served within four weeks from today. Rejoinder, if any, to be filed and copy served within two weeks thereafter.

10 Interim application and the appeal to come up for final hearing in due course.

11 We clarify that this order will not come in the way of progress of the suit.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)