

SA Pathan

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

CIVIL REVISION APPLICATION NO.357 OF 2022

Feather Touch and Anr	... Applicants
V/s.	
Venkatram Ramkrishan & Ors	... Respondents

Mr. Vivek Sharma, for applicant.

Mr. Valerian M. Rumao, for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 18, 2023

P.C.:

1. By consent of parties, the civil revision application is restored to file and taken up for hearing and final disposal forthwith.
2. Challenge in this revision application under Section 115 of the Code of Civil Procedure, 1908, is to the order dated 27 October 2021 passed in Summary Suit No.501 of 2015 directing applicants to deposit Rs. 19,27,027/- as a condition for filing written statement.
3. On perusal of the plaint, it appears that defendant Nos.2 to 4 are the partners of defendant No.1 firm. The suit is based on Memorandum of Understanding (MOU) is executed between defendant No.5 and the plaintiff.
4. As per MOU, defendants agreed to pay Rs.65,000/- along with 5% commission of total sales subject to deduction of TDS.

Based on such MOU, according to plaintiff, defendants were liable to pay amount of Rs.19,27,027/-.

5. According to defendants, the amount of 5% of commission is not quantified amount. According to them, defendants are not liable to pay 5% of the commission as sought by the plaintiff.

6. Learned Advocate for the respondents invited my attention to the email purportedly issued by defendant No.5 (applicant) dated 10 November 2014 and 14 December 2014 wherein chart of quantified amount of commission is annexed. The 5% commission quantified in the charts which matches with the suit claim. Therefore, prima facie, the defence of defendant that the amount is not quantifiable would not genuine; however, the defendant having made out a triable issue, the Trial Court justified in directing defendant No.5 to deposit suit claim towards condition for filing written statement. Hence, no interference under Section 115 of the Code of Civil Procedure, 1908, is called as there is no error of jurisdiction.

(AMIT BORKAR, J.)