

SA Pathan

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

CIVIL REVISION APPLICATION NO.358 OF 2022

Jakpa Ventrue LLP & Ors.	... 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

PC.:

1. 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.

2. 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) dated 24 July 2013. The MOU is executed between defendant No.5 and the plaintiff.

3. As per MOU, defendants agreed to pay Rs.65,000/- along with 5 % commission on 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/-.

4. The applicants raised a defence that MOU interlinked between the parties i.e. between defendant No.5 and plaintiff. Defendant No.5 is a proprietary firm. Defendant No.1 is partnership firm of which defendant Nos.2 to 4 are partners. With the result there is no privity of contract between defendant Nos.1 to 4 and the plaintiff. In view of the said fact, in my opinion, the Trial Court could not have directed defendant Nos.1 to 4 to deposit entire amount. On the contrary, in my opinion, the case of the applicant is covered by clause 17.1, of the judgment in the case of **IDBI Trusteeship Services Limited Versus Hubtown Limited** reported in (2017) 1 SCC 568. Hence, the applicants were entitled unconditional leave to defend. Hence, following order:

a) The impugned order to the extent of directing defendant Nos.1 to 4 to deposit an amount of Rs.19,27,027/- in the Court within three months is quashed and set aside.

b) The impugned judgment is modified granting unconditional leave to defendant Nos.1 to 4.

5. The civil revision application stands disposed of. No costs.

(AMIT BORKAR, J.)