

VRJ

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

WRIT PETITION NO.7350 OF 2023

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Messers Drytech Processes (I) Pvt. Ltd. ... Petitioner

V/s.

Messers Koffee Time Through Its Sole
Proprietor ... Respondent

Mr. Mehul Rathod with Ms. Pragya i/by KVT Legal for
the petitioner.

Ms. Deepika M. Bafna for respondent.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 6, 2023

P.C.:

1. The petitioner-original plaintiff is challenging order passed by the Trial Court rejecting summons for judgment.
2. The petitioner-original plaintiff filed Summary Suit No.174 of 2018. The suit is based on supply of goods and corresponding raising of invoices. There is no dispute between the parties regarding the invoices. However, according to the defendants, the goods supplied were of sub-standard quality.
3. In the affidavit in support of leave to defend, the defendant in paragraph 4(d) stated as under:

“It is pertinent to note that it was mutually agreed between me and the plaintiff that I will be liable to pay the amount on

invoices only after the sale of the products to my customers and after realizing the amount of consideration from my customers. Also, the plaintiff was supposed to reimburse and take the defective products along-with which are damaged in transit, but the plaintiff never did so as he assured.”

4. The Trial Court rejected summons for judgment on the ground that (i) the transaction in question was based on oral orders and, therefore, Summary Suit is not maintainable; (ii) the plaintiff has not filed original documents on record.

5. In so far as first reason by the Trial Court is concerned, the reason is factually incorrect as the suit is based on undisputed invoices. Therefore, suit under Order 37 Rule 2 of the Civil Procedure Code, 1908, is maintainable. In so far the original documents are concerned, verified copies of documents were placed on record and as per practice followed, it is after the leave is granted, plaintiff files original documents. However, in view of undisputed fact of raising of invoices, the mode of proof loses its significance at this stage.

6. The dispute regarding defective quality of goods cannot be said to be a triable issue for the purpose of grant of unconditional leave to defend as the material on record indicates that complaint regarding sub-standard quality of goods were made in 2015. The invoices based on which Summary Suit is filed are of the year 2017. Therefore, the Trial Court was not justified in rejecting summons for judgment.

7. Hence, following order:

a) The impugned judgment and order dated 2nd February

2023 passed by the Trial Court in Summary Suit No.174 of 2018 is quashed and set aside instead following order is substituted.

b) The defendant is granted conditional leave to file written statement on deposit of Rs.33,56,586/- within six weeks from today.

c) The written statement already filed shall not be given effect unless the amount is deposited.

8. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)