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

**WRIT PETITION NO.11765 OF 2023
AND
WRIT PETITION NO.11766 OF 2023
AND
WRIT PETITION NO.11767 OF 2023**

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Icon Ad Network Pvt. Ltd.

... Petitioner

V/s.

Sudha Viren Vora

... Respondent

Mr. Shashipal Shankar for the petitioner.

Mr. Prem Gidwani with Ms. Gauri Deshpande for the
respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 20, 2023

PC.:

1. By these writ petitions under Article 227 of the Constitution of India, the petitioner is challenging order dated 6 April 2023 passed by the Judge, City Civil Court, Greater Mumbai in Summary Suit No.189 of 2016 granting conditional leave to defend. The defendant is directed to deposit amount of Rs.10 lakh within two months from the date of the order.

2. On perusal of the plaint, it appears that the cause of action to seek relief is based on invoices referred in paragraph 6. Reference to the clause (O) of agreement dated 12 January 2015 is

in relation to existing liability as on 12 January 2015. On perusal of paragraph 6, it appears that the suit claim is based on invoices issued on 2 February 2015 and thereafter. It is, therefore, prima facie clear that the suit is essentially based on invoices after the agreed liability as on 12 January 2015. The liability claimed in paragraph 6 needs to be adjudicated by the Court. Unlike liability in Clause (O) of agreement dated 12 January 2015, the liability in paragraph 6 is not admitted.

3. On perusal of the reply to the Summons for Judgment, it appears that the defendant has raised a triable issue and the defense is genuine. Therefore, the Trial Court ought to have granted unconditional leave to defend to the petitioner.

4. For all the aforesaid reasons, following order is passed:

- a) Impugned order dated 16 April 2023 passed by Judge (Court Room No.13), City Civil Court, Greater Mumbai in Summary Suit No.189 of 2016 is quashed and set aside;
- b) The petitioner is granted unconditional leave to defend;
- c) The petitioner shall file its written statement within one month from today.

5. All three writ petitions stand disposed of in above terms. No costs.

(AMIT BORKAR, J.)