

Anand

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

WRIT PETITION NO. 7861 OF 2023

**ANAND
SUDHAKAR
SUDAME**

Sidaarrth Suniel Mutha

.Petitioner

Vs.

Poona Dal & Besan Mills Pvt. Ltd. & ors.

.Respondents

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Date: 2023.07.24
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Mr. Pankaj Sawant, Senior Advocate a/w. Mr. Anshul Rawat &
Mr. Anshuman R. Asare, Advocate, for the Petitioner

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 18.7.2023

P. C.

. The challenge in the Petition is to the order dated 16.12.2021 passed by learned 15th Jt. C. J. S. D., Pune rejecting the Petitioner's application seeking permission to deposit a sum of Rs. 1,50,33,333/- against his share for seeking leave to defend on the ground that the Apex Court by its decision dated 22.09.2021 while considering the issue of conditional deposit in the summons for judgment has held that the question as to whether liability of the Petitioner is limited to Rs. 10,00,00,000/- or not, is not the question at this stage.

2. Learned senior counsel appearing for the Petitioner points out a Memorandum of understanding (for short 'MOU')

which was entered into between the parties on 13.03.2019 in which the parties had agreed to restrict liability of the Petitioner to Rs. 10,00,00,000/- as against liability of Rs. 19,51,00,000/-. He would further point out that it is evident from the order of the Apex Court that Apex Court was not considering the issue of restricted liability of Rs. 10,00,00,000/- under the M.O.U. at that stage and in view thereof, an application came to be filed before the trial Court to consider M.O.U. and accept the balance amount.

3. Considered the submissions.

4. If the order of the Apex Court is perused, the Apex Court has given specific direction that leave to defend will be on deposit of Rs. 14,51,00,000/- within a period of two months, failing which the Respondents will be entitled to Judgment forthwith. While deciding the issue of conditional leave granted by the trial Court and upheld by this Court, the Apex Court has not taken into consideration the M.O.U. dated 13.03.2019 for the reason that the same was not pressed into service by the Petitioner at the time of seeking leave to defend. In view of the specific order of the Apex Court directing that leave to defend will be only on depositing a sum of Rs. 14,51,00,000/- within a period of two months, the application filed for restricting the

share of Defendant No. 2 to one Rs. 1,50,33,333/- by pressing into service the M.O.U. is clearly misconceived. The trial Court has rightly considered the order of the Apex Court and in view thereof, has rejected the application. It is open for the Petitioner to comply with the order of the Apex Court and thereafter, during the trial, it will be open for the Petitioner to press into service the M.O.U. entered into on 13.03.2019, to put forth their submission that the liability is restricted to Rs. 10,00,00,000/-.

5. Considering the decision of the Apex Court, there is no reason to interfere in the order of the trial Court rejecting the application filed by the Petitioner.

6. The Petition, being devoid of merits stands dismissed.

(SHARMILA U. DESHMUKH, J.)