

VRJ

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

WRIT PETITION NO.10094 OF 2023

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Boppana Global Civil Constructions Pvt.
Ltd & Anr.

... Petitioners

V/s.

Roshni Roadlines & Ors.

... Respondents

Mr. Sujit Mashal i/by Mr. H. N. Nasikwala for the
petitioners.

Mr. Anil D. Yadav for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 6, 2023

P.C.:

1. The petitioners-original defendants are challenging order passed by the Trial Court granting conditional leave to defend to the petitioners on deposit of Rs.50,00,000/- in a suit claiming recovery of Rs.99,58,154/- with interest at the rate of 8% per annum.
2. According to the plaintiffs, defendants were awarded a civil contract for L and T Ship Warf Project at Mumbai. Hence, by work order dated 15th July 2017, the defendants appointed plaintiffs as sub-contractor to carry out excavation work on worksite at Mumbai and Karwar.
3. Accordingly, plaintiffs carried excavation and related work

through JCB, Dumper and Pocklain. The plaintiffs raised bills for work done. As against Karwar site plaintiffs' ledger account indicates Rs.40,73,360/-. Therefore, according to the plaintiffs, total claim due against defendants was Rs.86,06,168/-.

4. The plaintiffs filed summons for judgment. The petitioners filed application seeking leave to defend. According to the petitioners, plaintiffs raised invoices of work only for site pertaining to Karwar. However, plaintiffs have falsely stated that work was carried out at Mumbai site. The work order dated 15th July 2017 was issued for only one year and the extension was subject to availability of work at Karwar site. Therefore, the suit is barred by limitation.

5. The plaintiffs produced on record by way of rejoinder and acknowledgment of debt dated 24th October 2019, which according to the Trial Court admits the claim of the plaintiffs.

6. The relevant text of admission relied by the Trial Court reads as under:

“PROVISIONALLY, WE MAY HAVE TO PAY RS.50 LAKHS + GST TO YOU. HOWEVER, WE WILL ADJUST FINAL FIGURES AFTER FINALISING THE ACCOUNTS AT MUMBAI, M.P.T.”

7. Learned advocate for the petitioners relied on judgment in the case of **Himani Alloys Ltd. vs. Tata Steel Ltd.** reported in (2011) 15 SCC 273, submitted that unless the admission is clear, unambiguous and unconditional, the discretion under Order 12 Rule 6 of the Civil Procedure Code, 1908, should not be exercised to deny the valuable right of a defendant to contest the claim.

8. On perusal of the portion of communication of the petitioners, in my opinion, it clearly admits liability to the extent of Rs.50,00,000/-. Though word “provisionally” is written, it could not be construed to take away the effect of admission as such admission needs to be construed in the context of accounts being finally settled.

9. The judgment relied by the advocate for the petitioners is clearly distinguishable based on the effect of provisions of Order 37 Rule 2 of the Civil Procedure Code, 1908. The distinction between regular suit and summary suit is that in a summary suit, the defendants are entitled to leave to defend only if conditions prescribed under Order 37 and interpreted by various precedents of the Apex Court such as raising triable issue or defendants being genuine and being defense made out by the defendants are fulfilled. However in regular suit, the defendant is entitled to defend the suit as of right. Order 12 Rule 6 of the Civil Procedure Code takes away such right of defense of the defendants and, therefore, in that context the Apex Court held that unless the admission is clear, unambiguous and unconditional, the Court should not exercise discretion to take away valuable right of the defendants to contest the suit.

10. In my opinion, therefore, the exercise of discretion by the Trial Court based on acknowledgment of debt dated 24th October 2019 cannot be faulted.

11. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)