

VRJ

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

WRIT PETITION NO.12888 OF 2023

Jay Air Cooling Private Limited & Anr. ... Petitioners

V/s.

Accurate Engineering Thr. Its Partner
Shamsher Mehmood Khan & Ors. ... Respondents

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**WITH
INTERIM APPLICATION NO.16358 OF 2023
IN
WRIT PETITION NO.12888 OF 2023**

Jay Air Cooling Private Limited & Anr. ... Applicants

V/s.

Accurate Engineering Thr. Its Partner
Shamsher Mehmood Khan & Ors. ... Respondents

Mr. Anil M. Dubey i/by Mr. Sunil Dubey for the
applicants/petitioners..

Mr. Anil S. Kharatmol for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 19, 2023

PC.:

1. The challenge in this petition is to the order passed by the Trial Court in Summary Suit granting leave to defend to the petitioners subject to deposit of Rs.14,56,352/- within thirty days.
2. The plaintiffs filed summary suit contending that they are doing some contracting/subcontracting work of installation and

maintenance of VRV Cooling and VRF Cooling for Air Conditioners, Windows. The principal contractor allotted sub contract work to the plaintiff at various sites. The partners of the plaintiff issued invoices in respect of completion of work as per purchase order of defendant No.1. The details of work are mentioned in Clause 6 of the plaint. Despite completion of work, defendant No.1 refused to pay the amount of suit claim.

3. The petitioners contested the suit denying contents of the plaint. According to the defendant No.1, suit claim was already paid as and by way of advance which was, thereafter, adjusted against the bill submitted by the plaintiff. Moreover, it is stated that the plaintiff supplied sub-standard material.

4. On perusal of the material on record, it appears that there is no serious dispute about completion of work by the plaintiff. However, as per the defendants the amount of suit claim was already paid. No material is produced on record by the defendants to show that amount of suit claim was already paid.

5. Learned advocate for the petitioners relying on judgment of the Apex Court in **M/s Raptakos Brett And Co. Ltd. vs. Ganesh Property** reported in (1998) Supp. 1 S.C.R. 486, submitted that the plaintiff is essentially enforcing right conferred by the Partnership Act and contract entered into between the parties and in absence of registration of partnership, Sub-section (2) of section 69 of the Partnership Act, 1932, bars institution of suit for recovery of amount.

6. On perusal of reply filed to summons-for-judgment and the

submissions recorded by the Trial Court, it appears that said ground was not raised before the Trial Court. Whether the plaintiff firm is registered or not is essentially a question of fact. Without such ground raised before the Trial Court, it is not open for the petitioner to raise such ground for first time in the present petition. Therefore, no adjudication was made by the Trial Court on the said point.

7. Considering the reasons assigned by the Trial Court, in my opinion, the grant of leave on payment of suit claim cannot be faulted.

8. The writ petition is dismissed. No costs.

9. In view of dismissal of the writ petition, interim application does not survive and the same stands disposed of as infructuous.

10. Time to deposit of amount is extended for period of thirty days from today.

(AMIT BORKAR, J.)