

VRJ

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

WRIT PETITION NO.14859 OF 2023

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VAIBHAV RAMESH
JADHAV
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Thyssenkrupp Industries India Private
Limited

... Petitioner

V/s.

B. K. Surface Coating & Anr.

... Respondents

Ms. Shivaneer Srivastava i/by M/s. Kanga and Co. for
the petitioner.

Mr. Ashutosh Kanshile with Ms. Namrata Parmar i/by
Kaushik and Co. for respondent No.2.

Mr. Nikhil Patil i/by Mr. P. M. Jahar for respondent
No.1.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 6, 2023

P.C.:

1. The petitioner-original defendant is challenging order dated 27th September 2023 passed by the City Civil Court in Summary Suit No.1292 of 2015 granting conditional leave to the petitioner on deposit of amount of Rs.14,09,202/-.

2. The respondent No.1-plaintiff filed a suit for recovery of amount of Rs.21,70,172/-. According to the plaintiff, defendant No.1 agreed to perform installation work of coal handling plant at 1200 MW coal fired thermal power plant at Tuticorin, Tamil Nadu, India. Accordingly, the plaintiff issued a quotation which the

defendant No.1 accepted. According to the plaintiff, defendant No.1's representatives assured payment for work done by the plaintiff. According to the plaintiff, he raised bills on defendant No.2 for amount of Rs.17,17,726/- for the work done from the month of April, 2011 to November, 2011. The said bills remained unpaid. Thereafter, the plaintiff sent another bill for amount of Rs.18,70,106/- to defendant No.1. Defendant No.1 requested plaintiff to raise invoice on defendant No.2. According to the plaintiff, despite reminders, plaintiff did not receive amount of bill. Therefore, there was a meeting between the plaintiff and the representatives of defendant on 3rd November 2012. Minutes of meetings were reduced into writing. According to the plaintiff, it was agreed between the parties that if defendant No.1 fails to pay the amount due and payable to the plaintiff, then same shall be paid by defendant No.1 and he will deduct the amount from R.A. bills of defendant No.2.

3. The cheque issued by defendant No.2 was dishonoured. Despite issuance of notice, defendants failed to pay the amount. Hence, the plaintiff filed summary suit for recovery of amount.

4. According to the petitioner, only defendant No.2 is liable to pay the amount. The trial Court has granted unconditional leave to defend to defendant No.2. The invoices raised by the plaintiff do not indicate amount reflected in the suit. According to the petitioner, there is no written contract or document which indicates liability of defendant No.1 to pay the suit claim.

5. The Trial Court, by the impugned order, granted

unconditional leave to defendant No.2 on the ground that there is no privity of contract between the plaintiff and defendant No.2 and granted conditional leave to defend to the petitioner on deposit of Rs.14,09,202/-.

6. The Trial Court based on recitals in the meeting dated 3rd November 2012 held that it is the responsibility of defendant No.1 to pay the outstanding amount to the plaintiff.

7. On perusal of the minutes of meeting dated 3rd November 2012, it appears that the petitioner agreed to pay balance amount of Rs.14,09,202/- if there is failure by defendant No.2 to pay the amount. The relevant clauses of minutes of meeting dated 3rd November 2012 read as under:

“

7. As on today M/s. Malabar Erectors has to pay the balance amount of Rs.14,09,202/-.

8. M/s. Malabar Erectors agreed to release payment of Rs.1,00,000/- to M/s. B.K. Surface Coating every month.

9. If M/s. Malabar Erectors fails to pay the amount every month to M/s. B. K. Surface Coating, then M/s. Malabar Erectors agreed for amount to be debited from their RA Bills and same can be given by M/s. ThyssenKrupp to M/s. B. K. Surface Coating.”

8. On conjoint reading of aforesaid three clauses, it appears that the petitioner prima facie accepted the liability to pay balance amount of Rs.14,09,202/-. Therefore, impugned order directing petitioner to pay amount of Rs.14,09,202/- before filing of written statement does not suffer from error of jurisdiction.

9. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)