

VRJ

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

WRIT PETITION NO.15757 OF 2023

VAIBHAV
RAMESH
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VAIBHAV RAMESH
JADHAV
Date: 2023.12.20
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JTPL Texmart Limited

... Petitioner

V/s.

Jai Specialty Starch

... Respondent

Mr. Yatin R. Shah for the petitioner.

Mr. Sajid Shamim with Mr. Jishan Ansari i/by S.
Shamim & Co. for the respondent.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 19, 2023

P.C.:

1. By the impugned order, the Trial Court has granted conditional leave to defend on deposit of Rs.16,51,690/-. The respondent filed Summary Suit for recovery of amount of Rs.25,77,877/- along with interest at 18% per annum. The defendant contesting the suit raised a defense that in furtherance of decree passed in Court at Rajasthan, in winding up petition he has deposited Rs.15,00,000/- towards part consideration of the same transaction which is subject matter of the suit.

2. According to the respondent, since the defendant admitted payment of liability of Rs.16,00,000/-, the Court accepting such admission has passed the impugned order. However, since the writ petition is against the decision making process of exercise of power under Order 37 Rule 2 of the Civil Procedure Code, 1908, it is

necessary for Trial Court to consider the all relevant defenses in accordance with law.

3. On perusal of the impugned order, it appears that this defense of the defendant is not referred or considered. Such defense being relevant for adjudication of grant of leave to Order 37 Rule 2 of the Civil Procedure Code, 1908, the Trial Court was under obligation to consider such application and then pass order while exercising power under Order 37 Rule 2 of the Civil Procedure Code, 1908. Hence, the impugned order deserves to be set aside. Hence, following order:

a) The impugned order dated 17th August 2023 in Summary Suit No.336 of 2014 in Summons For Judgment No.17 of 2015 is set aside.

b) The proceedings are referred back to the Trial Court.

c) The Trial Court shall reconsider Summons For Judgment No.17 of 2015 after considering all the defenses raised by the defendant and pass fresh order in accordance with law.

4. The writ petition stands disposed of. No costs.

5. It is made clear that the Trial Court shall decide Summons For Judgment uninfluenced by the observations made in the present order or in the impugned order.

6. In the facts of the case, the Trial Court shall decide summons for judgment within three months from today.

(AMIT BORKAR, J.)