

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 7369 of 2018

Anand Arunkumar Deshmukh

Versus

M/s Abhijeet Ferrotech Limited through its Managing Director Mr. Manoj
Jaiswal

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Yash Maheshwari, Advocate for the petitioner

CORAM : ANIL S. KILOR, J.

DATED : 7th JUNE, 2023.

Heard.

2. In this writ petition, the order dated 22nd December, 2017 passed below Exhibit 17 in Summary Civil Suit No. 92 of 2016 by the 10th Joint Civil Judge, Senior Division, Nagpur, is under challenge on the ground that the amount directed to be deposited by the trial Court while permitting the defendant to raise the defence, is less than the amount ought to have directed by the learned trial Court.

3. Learned counsel for the petitioner has placed reliance on the judgment of Hon'ble the Supreme Court of India in the case of IDBI Trusteeship Services Limited Vs. Hubtown Limited¹, in support of

1 2017(1) SCC 568

the submission that the amount should be atleast 50% of the total claim.

4. This writ petition was filed on 17th September, 2018 challenging the order dated 22nd December, 2017. Thus, it is evident that the petition was filed after a period of nine months and thereafter it was listed before this Court on 30th October, 2018 when the notice was issued for final disposal.

5. The respondent was served in the month of January, 2019. However, thereafter, the petitioner did not take any steps to get the matter listed before this Court. This is significant for the purpose that the matter relates to permission for raising the defence by the defendant.

6. On a query, the learned counsel for the petitioner fairly states that the suit is at the stage of evidence. The defendant has already filed his written statement and raised his defence. This writ petition is coming up after five years and by the time the suit has reached to the stage of evidence and likely to be decided in near future.

7. In the circumstances, at this stage I do not find any reason to consider the challenge in this writ petition and to find out what should be the condition for permitting the defendant to raise the defence, which

is otherwise also a discretionary power of the trial Court.

8. There is no dispute that the law laid down by the Hon'ble Supreme Court of India in the case of *IDBI Trusteeship Services Limited Vs. Hubtown Limited* (supra), however, in the above referred backdrop as this Court is not inclined to exercise its discretion, the writ petition is dismissed.

[ANIL S. KILOR, J.]