



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 WRIT PETITION NO. 1649 OF 2024
WINGS AUTOMOTIVE THROUGH ITS PROPRIETOR RANJEET
SHRINIWAS REDDY MALAKE
VERSUS
BLUE STAR ENGINEERS AURANGABAD

...
Advocate for the Petitioner : Mr. Shivraj B. Kadu

...
CORAM : ARUN R. PEDNEKER, J.
DATE : 16th OCTOBER, 2024

PER COURT:

1. Heard.
2. By the present petition the petitioner challenges the order dated 14.12.2023 passed below Exhibits 24-A, 26 and 27 in Summary Civil Suit No.894 of 2022, passed by the learned Joint Civil Judge, Senior Division, Aurangabad. Thereafter, by amendment further prayers were added challenging the impugned order dated 24.07.2023, passed below Exhibits 23 and 24 in Summary Civil Suit No.894 of 2022.
3. The present petitioner is aggrieved by the order dated 24.07.2023, whereby the application seeking leave to defend the summary suit is rejected. It is observed in the order that the defendant had earlier appeared in the matter and filed the Vakilpatra. However, the defendant failed to appear in response to the judgment summons and

also failed to file any application for leave to defend. Thereafter, as per purshis at Exhibit 16 by the plaintiff the matter was kept for judgment under Order 37 of the CPC. It is also further noticed that on the last date i.e. on 28.06.2023, the applications were filed at Exhibits 23 and 24 without mentioning any facts and circumstances and the grounds on the basis of which the defendant is seeking to leave to defend the suit. The matter was kept for further arguments as per order dated 28.06.2023 and the plaintiff has filed written notes of arguments. The applications being filed at the belated stage without mentioning any ground for delay application to seek the permission to leave to defend is dismissed.

4. Thereafter, the petitioner / defendant again filed applications at Exhibit 24-A, 26 and 27 for setting aside the no written statement order by condoning the delay. The court noticed that earlier application seeking leave to defend has been dismissed and no grounds of delay are explained and, that, once the application for leave to defend has been dismissed, the present application for setting aside the no cross order is of no consequences. Instead of approaching the higher authorities to challenge the order dated 24.07.2023, the defendant has again moved another similar application before the learned trial court, as such, the application at Exhibits 24-A, 26 and 27 are rejected by order dated 14.12.2023.

5. Earlier the order passed on 14.12.2023 was challenged before this court, and, thereafter, by amendment, earlier order dated 24.07.2023 is also challenged.

6. In the course of argument, when this matter was earlier listed, the petitioner was asked, whether he is ready to deposit 50% of the amount of recovery for granting leave to defend the suit, he has not taken any instructions in that regard and has further argued the matter.

7. The perusal of the original application seeking leave to defend would indicate that the application belatedly made is a sham defence. Prima facie, there is no triable issue raised. The case of the plaintiff in the summary suit is that the GST invoices are pending since 22 October 2021 and the pending payment is Rs.10,77,420.35/- towards the same.

8. Neither the defence raised is prima facie tenable nor the petitioner has shown willingness to deposit any amount to grant leave to defend the suit. As such, no case is made out. The writ petition stands dismissed.

[ARUN R. PEDNEKER, J.]