

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 239 OF 2024

M/s. Tavron Engineers & Ors.

.. Petitioners

Versus

Mukesh Champalal Munot

.. Respondent

-
- Mr. Mutahhar Khan i/by H. Rahman for Petitioners
-

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 7, 2024

P. C.:

1. Heard Mr. Khan, learned Advocate for Petitioners.
2. At the outset Mr. Khan has drawn my attention to the impugned order dated 21.09.2023 passed by the learned Trial Court in Summons for Judgment No. 100288/2022 dismissing the Summons for Judgment, however granting leave to Defendants to defend the Suit subject to payment of Rs. 24,00,000/-. On perusal of paragraph No. 17, 18 and 19 of the impugned order, it is seen that learned Trial Court has appreciated the defences raised by Defendants which have been noted in the above stated paragraphs and has held that the Defendants have made out a case for leave to defend. It is next seen that in paragraph No. 18, Plaintiff's claim of outstanding liability of Rs. 24,25,000/- has been noted by the Trial Court but in paragraph No. 19, learned Trial Court clear records that according to Defendants they

were ready and willing to pay the amount of Rs. 14.72 lacs by a particular date, since they had claimed that the goods were defective. It was never the Defendants' case that the entire amount had remained unpaid. In this view of the matter, Mr. Khan would submit that the conclusion arrived at by the learned Trial Court in paragraph No.21 directing Defendants to deposit the entire amount of Rs. 24 lacs to defend the Suit itself is incoherent with the findings returned by the learned Trial Court itself. On perusal of paragraph Nos. 17 to 221, I agree with what Mr. Khan's submits. Once the learned Trial Court has concluded that Defendants have made out a case for leave to defend, it cannot be that the Plaintiff's entire claim is to be accepted, considering that Defendants themselves had categorically stated that they were ready and willing to deposit the amount of Rs. 14.72 lacs. In that view of the matter, the impugned order dated 21.09.2023 in so far as clause 2 of the operative part of the order is concerned shall stand substituted by the amount of Rs. 14.72 lacs. It is clarified that clause 2 of the operative part will now read as "*Leave is granted to defendants to defend the Suit, subject to payment of Rs. 14,72,000/- (Rs. Fourteen Lacs Seventy Two Thousand only)*".

3. In so far as clause 3 of the operative part of the order is concerned, the same shall stand modified and the time to deposit the amount is extended by a further period of two weeks from today as

also time to file the written statement stands extended by a further period of two weeks from today.

4. Apart from the aforesaid two modifications, rest of the order dated 21.09.2023 shall remain as it is.

5. Writ Petition is disposed in the above terms.

Amberkar

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[MILIND N. JADHAV, J.]