

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8289 OF 2022

Larsen and Toubro Ltd

.. Petitioner

Versus

Merino Industries Ltd & Anr.

.. Respondents

.....

- Mr. Darshit Jain a/w Mr. Mayur Bhojwani & Ms. Dhamini Nagpal
i/by Manilal Kher Ambalal & Co for Petitioner
- Mr. Pankaj Shantilal Shah for Respondent No. 1

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 16, 2024

P. C.:

1. Heard Mr. Jain, learned Advocate for Petitioner and Mr. Shah, learned Advocate for Respondent No. 1.

2. After hearing Mr. Shah and Mr. Jain, learned Advocates for the parties before me in the present Writ Petition and Interim Application both, a clarificatory order was passed by me on 21.02.2024 directing the suit proceedings to proceed against Defendant No. 1. This is a Commercial Suit filed for recovery of amounts against Defendant Nos. 1 and 2. There are two Defendants. Defendant No. 1 is Add Plus Enterprises (Respondent No. 2 herein) who had issued cheques to the Petitioner (Org. Plaintiff) pursuant to supply of installation sheets which were used in the project undertaken by Defendant No. 1 on behalf of Defendant No. 2. It is Defendant No. 2's case that it had

independently procured the installation sheets from Defendant No. 1 independently and also paid for the same. Though by virtue of the impugned order, the Suit has been directed to be proceeded against Defendant No. 1, I have impressed upon Mr. Shah and Mr. Jain that this is a case where the Plaintiff on supply of goods to the Defendants had raised invoices which according to Plaintiff have remained unpaid and therefore Plaintiff has approached the Court by filing the Commercial Suit.

3. In so far as Defendant No. 2 is concerned, the goods rather installation sheets which were supplied by the Plaintiff were admittedly used for installation. Mr. Shah would submit that Defendant No. 2 would therefore be the guarantor, which submission is refuted by Mr. Jain, learned Advocate for Defendant No. 2. However, this does not take away the fact that the goods supplied by the Plaintiff were actually used or rather installed by Defendant No. 1 in the project of Defendant No. 2. In that view of the matter, this being a Commercial Suit, I am inclined to direct the learned Trial Court to proceed with the Commercial Summary Suit No. 8 of 2021 both against Defendant Nos. 1 and 2 both in accordance with law. Needless to state that the Suit shall be tried as expeditiously as possible and in any event shall be decided within a period of six months from today. In that view, the impugned order dated

21.04.2022 is quashed and set aside with a direction to Defendant No. 2 to file its written statement within a period of four weeks from today. On such written statement being filed, learned Trial Court is directed to proceed with the suit proceedings as directed by this Court against both Defendants and determine the same in accordance with law. Needless to state that the order of deposit against Defendant No. 2 is set aside in view of the aforesaid directions.

4. It is further clarified that the order pertaining to attachment before judgment as noted by the learned Trial Court in its order dated 08.10.2021 at page Nos. 410A-410B of the Petition is set aside.

5. All contentions of the parties to the Suit proceedings are expressly kept open.

6. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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