

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 381 OF 2024

M/s. Hind Exports

.. Petitioner

Versus

Sanket Gandhi & Ors.

.. Respondents

.....

- Mr. Rajesh Khandelwal for Petitioner
- Mr. Indravadan Buddhadev for Respondent Nos. 1 to 3

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 29, 2024

P. C.:

1. Heard Mr. Khandelwal, learned Advocate for Petitioner and Mr. Buddhadev, learned Advocate for Respondent Nos. 1 to 3.

2. Present Writ Petition takes exception to the order dated 03.08.2022 passed by the learned City Civil Court, Mumbai in Summons for Judgment No. 94 of 2022 granting unconditional leave to Defendant Nos. 1 to 3 to defend the Suit.

3. Mr. Khandelwal would submit that Petitioner (Org. Plaintiff) entered into a transaction for purchase of 'Soda Ash' sometime in June 2018. He was approached by Defendant No. 1 claiming to be a proprietor of Defendant No. 2 – Partnership Firm. Defendant No. 1 facilitated the procurement of goods required by Plaintiff from the international market and provided a quotation from Defendant No. 4 based outside the territorial jurisdiction of this Country in Dubai by

e-mail dated 03.08.2018. Proforma invoice was sent by Defendant No. 1 on 20.08.2018 which was issued by Defendant No.4 through Defendant No. 1 in respect of Defendants agreeing to supply of 500 MT 'Soda Ash' within two weeks of confirmation of receipt of advance payment. Advance amount of 20% was immediately paid by Plaintiff against invoice. It is averred by Plaintiff that Defendant No. 1 in fact represented to Plaintiff that Defendant No. 4 was his own company and he was representing it in the international market though this is refuted by Mr. Buddhadev, learned Advocate for Defendant Nos. 1 to 3. It is seen that on 12.10.2018, Plaintiff cancelled the order and sought refund of the 20% of amount which was paid over to Defendant No. 4. At this juncture, Defendant No. 1 sought for the bank details of Plaintiff for effecting refund of the said advance amount. Incidentally, Plaintiff received only an amount of Rs. 9,33,095/- being 50% of the advance amount from Defendant No. 4 into his bank account, thereby leaving the balance amount of Rs. 9,33,095 as outstanding. The balance amount was not refunded or returned back to the Plaintiff resultantly leading to filing of Commercial Summary Suit No. 35 of 2022 against Defendants.

4. Mr. Buddhadev would vehemently argue in support of the impugned order dated 03.08.2022 stating that the said order has been correctly passed in view of there being no privity of contract between

Plaintiff and Defendant Nos. 1 to 3 and in that view of the matter, the Suit itself would not be maintainable against Defendant Nos. 1 to 3 and this leads to triable issues having been raised. He would submit that Defendant Nos. 1 to 3 have not signed the invoice which has been received by the Plaintiff nor they have taken any advance payment from the Plaintiff into their bank account and the transaction was only effected between Plaintiff and Defendant No. 4. It is seen that Defendant No. 3 is the proprietor of Defendant No. 2 – Partnership Firm.

5. Case of the Plaintiff is that Defendant No. 1 acted as an agent of Defendant No. 4. *Prima facie* it is seen that Defendant No. 1 himself facilitated the transaction by submitting the invoice obtained from Defendant No. 4 to the Plaintiff and induced the Plaintiff to make the advance payment and subsequently when the Plaintiff cancelled the order and asked for the refund of the 20% of the amount paid to Defendant No. 4, Defendant No. 1 also asked for bank details of the Plaintiff for effecting refund of the advance amount. That apart, it is the Defendant No. 1 who in June 2018 who had approached the Plaintiff and assured to supply the goods desired by the Plaintiff. Whether the role of Defendant No.1 can be ascribed to be that of an agent and whether it would be attributable under the provisions of Section 230 of the Contract Act would be undoubtedly a triable issue in

view of the resistance advanced by Defendant Nos. 1 to 3, but in the limited facts of the present case which are otherwise not denied by Defendant Nos. 1 to 3, I am not in a position to agree with the findings returned by the learned Trial Court in allowing unconditional leave to Defendant Nos. 1 to 3 to defend the suit proceedings. It is seen that Defendant No.4 who is involved in the transaction is located beyond the territorial jurisdiction of this country and as usual is not even defended nor present before the learned City Civil Court, Mumbai nor this Court.

6. The facts which are referred to herein above as also the pleadings in the present case would clearly indict the role of Defendant No.1 in the transaction specifically. It is Defendant Nos. 1 and 2 who have facilitated the procurement of goods and inducted Plaintiff to part with the advance payment. It is they who have ensured return of 50% of the advance amount back to the Plaintiff. Since Defendant No. 1 has a clear nexus with Defendant Nos. 2 and 3 in law, Defendant Nos. 1 to 3 cannot escape the liability and thus cannot be allowed unconditional leave and in that view of the matter, the findings returned by the learned City Civil Court in its order dated 03.08.2022 stand quashed and set aside. Summons for Judgment No. 94 of 022 stands allowed with direction to the Defendant Nos. 1 to 3 to deposit the amount of Rs. 9,33,095/- in the learned Trial Court.

Needless to state that all contentions of both the parties including that of interest are expressly kept open.

7. The above amount shall be deposited within a period of eight weeks from today. Needless to state that order of deposit within eight weeks shall not stand in the way of the Trial Court to carry on with the trial. In view of the above and considering the issue involved between the parties, learned Trial Court is requested by this Court to dispose of the Commercial Summary Suit proceedings as expeditiously as possible and in any event within a period of one year from today. Parties are directed to co-operate with the learned Trial Court. Trial Court is directed to give adjournments to the parties only if they are utmost necessary due to any emergency or exigency. Suit shall be disposed of strictly in accordance with law and on merits of the matter.

8. With the above directions, Writ Petition is allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

Digitally signed
by RAVINDRA
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AMBERKAR
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2024.04.29
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