

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.52 OF 2024

Naresh Kumar and Anr.

.. Petitioners

Versus

Werender Technologies India Pvt. Ltd.

.. Respondent

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• Mr. Sharad V. Kulkarni, Advocate for Petitioner.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 08, 2024

P.C.:

- 1.** Heard Mr. Kulkarni, learned Advocate for Petitioner.
- 2.** The impugned order in the present Writ Petition is dated 08.09.2023 passed in Application filed below Exhibit-18 under Order XXXVII Rule 3 of Code of Civil Procedure, 1908 (for short '**CPC**') whereby Application stands rejected.
- 3.** Mr. Kulkarni would submit that in a parallel suit proceedings namely Summary Suit proceeding No.18 of 2020 when the Defendants preferred Application under Order XXXVII Rule 3 of CPC for leave to defend before the Trial Court in respect of similarly placed transaction between the parties and rather for the same cause of action, in that Application filed below Exhibit-20 in the said Summary Suit, the learned Trial Court granted conditional leave to defend on the condition of deposit of one third amount i.e. Rs.12,00,000/- to the Petitioner. He would submit that the said one third amount has been

deposited by the Petitioner in Summary Suit No.18 of 2020 in the Trial Court.

4. He would submit that, that particular order and fact could not be brought to the notice of the learned Trial Court by the Petitioner for consideration when the order below Exhibit-18 came to be passed in Special Summary Suit No.19 of 2020. He would submit that the Petitioner who is Defendant in the Trial Court has a plausible defence in view of the transactions between the parties whereby the Petitioner who is Defendant before the Trial Court has admitted liability only to the extent of Rs.3,52,792/- being due and payable to the Plaintiff and nothing more. He would submit that being aggrieved with the order passed below Exhibit-20 in Summary Suit No.18 of 2020, the Plaintiff therein has filed Writ Petition No.7960 of 2023 which is also pending in this Court.

5. The request made by Mr. Kulkarni to direct deposit of a similarly proportionate one third amount shall be considered on the next date after hearing the Plaintiff.

6. A copy of this order alongwith copy of Writ Petition shall be served on the Plaintiff.

7. List Writ Petition No.52 of 2024 alongwith Writ Petition No.7960 of 2023 on **29th January, 2024.**

H. H. SAWANT

[MILIND N. JADHAV, J.]

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