

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2942 OF 2024

Vandana Creations Pvt. Ltd.

.Petitioner

Versus

Laxsons Systems Pvt. Ltd.

.Respondent

Mr. Karan Dua a/w. Mr. Aansh Desai i/b. Pythagoras Legal,
Advocates, for the Petitioner

Mr. Hrushi Narvekar a/w. Ms. Shaheda Madraswala & Mr. Akshat
Tiwari i/b. Vashi and Vashi, Advocates, for the Respondent

CORAM : S. M. MODAK, J.

DATE : 25.11.2024

P. C.

1. Heard Mr. Dua, learned Counsel for the Petitioner and
Mr. Narvekar, learned Counsel for the Respondent.

2. The trial Court has granted conditional leave to defend to the
Defendant vide Judgment dated 06.07.2023 passed in Summons for
Judgment No. 289 of 2016. The condition put was to deposit a sum
of Rs. 10,00,000/-, out of suit claim of Rs. 35,22,836/-. The
particulars are given in the annexure to the plaint. In fact as per the

directions, the said amount was to be paid to the Plaintiff directly.

This is one of the grievances raised in this Petition.

3. When the Defendant challenged this Order by filing present Writ Petition, this Court vide Order dated 11.11.2024 was pleased to stay the execution proceedings subject to deposit/payment of Rs. 10,00,000/- with this Court. The amount is already deposited by way of cheque. Even the Defendant was directed to file their Written Statement. That period has expired today. Time to file Written Statement is extended by a period of four weeks from today.

Background facts

4. The Plaintiff – Company allowed their premises at Khar to be used by Defendant – Company. Defendant – Company is manufacturing cloths/fabrics, textiles. They were in need of premises to be used as franchisee outlet. Both entered into Franchisee Agreement dated 02.07.2004. Defendant agreed to pay commission to the Plaintiff. As a part of business, Defendant has kept certain furnitures, fixtures and paraphernalia in the franchisee premises.

5. Their business continued from July 2004 till 30th March, 2016. Dispute arose in between parties on various issues including

amount of commission, interpretation of terms of Franchisee Agreement. Defendant withdrew their goods but furniture fixtures etc. remained. There is a dispute whether Defendant took them or still it is lying there. Defendant has issued cheque of Rs. 22,98,752/- towards the commission. The claim is disputed by the Defendant. On this background, Summary Suit is filed for recovery of Rs. 35,22,836/-.

6. On this background, the impugned Order came to be passed and the present Petition is filed. It is true in this Petition, the Petitioner has taken various contentions. It includes their claim as to the furniture possessed by the Plaintiff in spite of discontinuation of the Franchisee Agreement. The Plaintiff deny these allegations. There is also a contention raised about the non-maintainability of the Summary Suit in view of the arbitration clause. There are contentions about the interest claimed. Other contentions are also raised.

7. When this Petition was heard from both the sides on 11.11.2024, I have permitted the Petitioner to deposit Rs. 10,00,000/- and earlier stay was continued. So also the

Petitioner/Defendant was permitted to file Written Statement within 2 weeks. **Even both the learned Counsel were requested to take instructions from their respective clients to refer the dispute to mediation.** It was suggested because the dispute is purely commercial dispute and instead of fighting the litigation in long drawn trial procedure (even though Summary Suit), it is in the interest of parties to resolve the dispute through the process of mediation.

8. That is how when the Petition came before me today, both the learned Counsel have shown their willingness to refer the dispute to mediation and they are ad idem about the same. They have suggested the name of Mr. Rubin Vakil, learned Counsel practicing in this Court. That is how now the dispute can be referred to learned Advocate/Mediator Mr. Rubin Vakil. It is made clear that learned Mediator has to conduct the meetings as per mediation rules and it is not expected to conduct meeting just like an arbitrator. It is necessary to start with this process through Mediation Committee working in this Court through the Deputy Registrar.

9. When he will conduct the meetings, both the parties are at liberty to dwell upon all these contentions and when the Mediator will mediate, he will certainly make an attempt to arrive at some settlement. On this background, learned Counsel for the Petitioner submitted that let this Petition be kept pending till there is outcome of mediation. Whereas according to the learned Counsel for the Respondent, let this Petition can be disposed of. This Court is also of the same opinion.

10. Learned Counsel for the Petitioner submitted that their contentions raised in this Petition can be kept open. Even if the mediation fails, this Court feels that all the contentions raised in the Petition can be taken when the suit will proceed for further hearing to the next stage that is hearing on the point of issuing Summons for Judgment.

11. Considering the above facts and circumstances, this Court feels that the Writ Petition can be can be disposed of. The reason is after undergoing the process of mediation, if there is no fruitful solution, best course is to agitate the grievances by the Petitioner before the trial Court rather than this Court.

12. After meetings, the mediation may be successful or may not be successful. If it is successful, the Suit can be disposed of and if it is not successful, parties can go on with the Suit to a subsequent stage.

13. Learned counsel for the Respondent submitted that liberty may be granted to them to apply for withdrawal of the amount, if the mediation fails. Such liberty is certainly there to apply for withdrawal of the amount and the trial Court can decide the Application on the basis of the merits depending upon outcome of the mediation. Hence the following order is passed :--

O R D E R

(a) The dispute amongst the parties is referred for resolution to learned Advocate/Mediator - Mr. Rubin Vakil.

(b) Parties can take his appointment. Learned Mediator to do the needful what is required as per mediation rules. Both the parties are directed to pay his fees.

(c) Learned Mediator is requested to submit his report to the Court seized of the suit. The trial Court to pass necessary Orders on receipt of the report.

(d) Stay granted earlier to the execution and implementation of the Order granting leave dated 06.07.2023 is continued till the report of mediation being submitted to the trial Court.

(e) Copy of this Order be sent to the Deputy Registrar, Mediation Committee of this Court. He is directed to assist the parties and the learned Mediator in case of need. His assistance can also be taken in case of need.

(f) The amount, if credited (on the basis of cheque realization) be transferred by Registry to the City Civil Court.

14. With these observations, the Writ Petition stands disposed of.

(S. M. MODAK, J.)