

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5795 OF 2024

M/s. Mobile Arts S.A.L.

.. Petitioner

Versus

M/s. Mauj Mobile Pvt Ltd

.. Respondent

-
- Mr. Pankaj Mehta for Petitioner

.....

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 20, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 20.06.2024.
3. Heard Mr. Mehta, learned Advocate for Petitioner.
4. Present Writ Petition takes exception to the order dated 25.01.2024 passed by learned Trial Court in Summons for Judgment No. 152 of 2023 in Commercial Summary Suit No. 316 of 2022. By virtue of the said order, Summons for Judgment filed by Plaintiff (Petitioner herein) was dismissed while giving unconditional leave to the Defendant (Respondent herein) to defend the Suit.
5. Mr. Mehta would draw my attention to paragraph No. 11 of the said order wherein specific reasons have been assigned by the learned Trial Court while arriving at a conclusion for granting unconditional leave. There are two specific reasons stated and arrived at by the learned Trial Court. First reason is with respect to not filing of

Certificate under Section 65B of the Indian Evidence Act, 1872 by the Plaintiff in respect of the email correspondence between the parties. Mr. Mehta has drawn my attention to the said correspondence and would submit that the contents of the said correspondence clearly reveal the liability of Defendant. He would also inform the Court that Certificate under Section 65B was already filed on record. Be that as it may, this is a purely technical reason and even at this stage can be amended. In so far as the second reason is concerned, learned Trial Court has opined that the Plaintiff has not given any details of its own bank account where it had received the part payment from the Defendant Company. Mr. Mehta is therefore directed to place on record the details of the part payment received by the Plaintiff in its bank account so as to enable this Court to consider the findings returned by the learned Trial Court in paragraph No. 11 which has led to granting of unconditional leave to the Defendant. If the Plaintiff demonstrates the same, this Court will consider the Plaintiff's case. Plaintiff is also directed to file details of receipt of part-payments, if any in its bank account on affidavit. Copy of the same shall be served on Defendant.

6. Issue notice to the Respondent made returnable on 08.07.2024. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve copy of the Petition along with copy of this order on

the Respondent and inform about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondent to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioner.

7. Respondent is directed to remain present either through its representative or through its Advocate on the next adjourned date. It is made clear that if Respondent remains absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondent.

8. Stand over to **8th July, 2024.**

Amberkar

[MILIND N. JADHAV, J.]

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
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