

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8916 OF 2024

Vimsar Products Pvt Ltd

.. Petitioner

Versus

Ruchit Trading Pvt Ltd

.. Respondent

-
- Ms. Sunanda Kumbhat for Petitioner
 - Mr. Yashpal Jain for Respondent
-

CORAM : MILIND N. JADHAV, J.

DATE : JULY 25, 2024

P. C.:

1. Heard Ms. Kumbhat, learned Advocate for Petitioner and Mr. Jain, learned Advocate for Respondent.

2. By the present Writ Petition, judgment & order dated 12.04.2024 passed in Summons for Judgment No. 276 of 2023 is under challenge. By this order, learned Trial Court granted leave to the Defendant (Petitioner herein) to defend the Suit on the Defendant depositing an amount of Rs. 18 Lacs as a pre-condition. Time of two months was granted to the Defendant for the same. Present Writ Petition is filed by Defendant on 22.06.2024.

3. Ms. Kumbhat would submit that there is admittedly a relationship between the parties for trading of Aluminum scrap and other allied products. This crucial fact is not denied by the Plaintiff (Respondent herein). Transaction between the parties led to the

Plaintiff approaching the Trial Court seeking recovery of the amount of Rs. 43.97 Lacs inclusive of interest on the date of filing of the Suit from the Defendant. Transaction between the parties has been elicited by the Trial Court in paragraph Nos. 4 to 7 of the impugned judgment and for the sake of brevity, I do not wish to repeat and reiterate the same herein. On the transaction of goods there is no dispute.

4. Writ Petition is strongly objected to by Mr. Jain on the premise that there is severe dereliction on the part of the Defendant in alleging supply of defective goods and despite Plaintiff attempting to deal with the said objections, not giving any opportunity to Plaintiff to do the same. Mr. Jain would contend that admittedly after the dispute arose with respect to the transacted goods on the ground that the goods were defective, there was a round of reconciliation and settlement between the parties. He would submit that Plaintiff offered to Defendant to replace the said goods on the same being returned back which the Defendant did not comply with. Next he would submit that Plaintiff called upon Defendant to seek inspection of the defective transacted goods at / in Indore, Madhya Pradesh where they were delivered and also visited the said location but Defendant did not give inspection and rather destroyed and melted the said transacted goods thereby destroying the evidence. What he would urge to the Court is that once the Defendant has acted malafide in this fashion and

destroyed and melted the transacted goods, the defence of the Defendant that the said goods were defective cannot stand to test. He would submit that after the aforesaid instance, when parties approached for reconciliation, after Plaintiff having raised his demand, Defendant paid a paltry amount of Rs. 6.70 Lacs only out of the total demand raised by Plaintiff and in that view of the matter, resultantly the Plaintiff was compelled to file the present Suit. Mr. Jain has drawn my attention to the fact that the principal amount of recovery for which the Suit has been instituted is based on the outstanding invoice of Rs. 32.04 Lacs which is appended at page No. 76 of the Petition. There is also claim towards interest along with future interest.

5. *PER CONTRA*, Ms. Kumbhat would argue that the learned Trial Court has after hearing both sides opined that triable issues have been raised by the Defendant. She would candidly inform the Court that learned Trial Court has also returned a finding in the impugned judgment that since the Defendant has used the transacted goods then in that case the Defendant will have to pay the charges. Though at the outset she would pitch her case on behalf of the Defendant to argue that Defendant should be granted unconditional leave to defend the Suit proceedings since originally the said goods were claimed to be defective by Defendant, on being informed by the Court that in view of

the *prima facie* observations and findings returned by the learned Trial Court in paragraph No. 25 of the impugned judgment, the submissions advanced on behalf of Defendant for a complete waiver cannot be considered by this Court, she has taken instructions from the Defendant and would submit that Defendant shall deposit 50% of the amount which has been directed to be deposited under operative clause (1) of the impugned judgment within a period of one week from today. On such instructions obtained from the Defendant and placed before the Court and in view of the above facts, I am inclined to consider the submissions made by Ms. Kumbhat.

6. Learned advocate for Plaintiff would vehemently object and submit that considering the invoice amount of Rs. 32 Lacs, this Court should not consider the principal amount of Rs. 18 Lacs. This submission of the Plaintiff, I am not inclined to accept in view of the findings returned by the learned Trial Court in paragraph No. 26 of the impugned judgment. It is a clear finding which is supported by a debit note issued by the Defendant that amount little in excess of Rs 18 Lacs is due and payable which has been considered as a triable issue by the learned Trial Court in paragraph No. 26 of the impugned judgment. That apart, the fact that parties entered into reconciliation and settlement after raising of the debit note and by virtue thereof Defendant paid the amount of Rs. 6.7 Lacs to the Plaintiff also needs

to be taken into account. Though Mr. Jain has vehemently objected to grant of any waiver of the pre-condition set by the learned Trial Court in the impugned judgment, I am not inclined to accept his submissions in view of my above observations and findings.

7. In view of the above, Defendant who is the Petitioner before me is directed to deposit an amount of Rs. 9 Lacs which is 50% of the amount which has been directed to be deposited by the Trial Court in the Trial Court within a period of one week from today positively. In view of the findings returned by the learned Trial Court in paragraph Nos. 25 and 26, this Court after considering the transaction between the parties and relationship between the parties with respect to the transacted goods has used its discretion. There is also one more direction which this Court desires to give to the learned Trial Court. Considering the narrow issue involved between the parties, learned Trial Court is requested by this Court to dispose of Commercial Suit No. 34 of 2023 as expeditiously as possible and in any event within a period of four months from today strictly in accordance with law and after allowing both parties to lead their respective evidence. Parties shall co-operate with the Trial Court and shall not seek unnecessary adjournment unless it is absolutely necessary in the case of any urgency or exigency, but it shall be at the discretion of the Trial Court.

8. Firstly Defendant shall deposit the amount as directed herein above. Simultaneously Defendant shall file written statement within a period of two weeks positively before the learned Trial Court which shall be taken on record by the Trial Court. Advance copy of the WS shall be served on Plaintiff. Thereafter learned Trial Court shall proceed with the matter and dispose of the same as per its discretion and convenience as directed by this Court.
9. Needless to state that the adjudication and decision in the Suit proceedings shall be based on the evidence that shall be led by the Plaintiff and the evidence in rebuttal led by the Defendant.
10. Impugned judgment & order dated 12.04.2024 stands modified in the above terms. Rest of the judgment remains the same.
11. Writ Petition is partly allowed and disposed.

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[MILIND N. JADHAV, J.]

Digitally signed
by RAVINDRA
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