

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9538 OF 2024

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T S Clothing Private Limited

... Petitioner

V/s.

Amratlal Dhanrajji Jain

... Respondent

Mr. Maulik Tanna a/w Mr. Hardik Jain i/by A V Jain
Associates for Petitioner.

CORAM : AMIT BORKAR, J.

DATED : JULY 30, 2024

P.C.:

1. By this petition under Article 227 of the Constitution of India, the petitioner (original defendant in summary suit) is challenging the order passed by the Trial Court granting conditional leave to the petitioner subject to payment of Rs.25 lakh to be paid within sixty days from 19 April 2024.

2. According to the respondent-plaintiff during the period from 22 January 2019 to 9 September 2020, the respondent-plaintiff supplied goods worth of Rs.35,84,705/- to the petitioner-defendant and prepared invoices. According to him, the petitioner never disputed about the quality and quantity of the goods. Despite reminders through telephone, email defendant neglected to pay the amount.

3. The respondent, therefore, sent legal notice to the petitioner

on 28 January 2021 and also sent an email dated 5 July 2021 calling upon the petitioner to make the payment; however, the defendant through email dated 8 July 2021 admitted the liability and promised to make part-payment. Due to failure to pay the balance amount, respondent-plaintiff filed summary suit for recovery of amount of Rs.45,91,924/-.

4. The respondent took out Summons for Judgment. The petitioner based on Summons for Judgment sought for unconditional leave contending that no transaction took place between the petitioner and respondent. The invoices filed in support of respondent's claim in the summary suit are false and fabricated. The email which is the basis of filing the summary suit is false document and, therefore, the defendant is not entitled to Summons for Judgment.

5. The Trial Court based on the email sent by the petitioner on 8 July 2021, in response to the email issued by the plaintiff on 5 July 2021 granted leave to defend the petitioner subject to payment of Rs.25 lakh.

6. Learned advocate for the petitioner submitted that the email relied upon by the Trial Court for deposit of Rs.25 Lakh for grant of leave to defend was based on an email which is allegedly in the name of individual director of petitioner-company. Since, the company is distinct legal entity, in absence of indisputable proof in support of claim of the respondent, the Trial Court ought to have granted unconditional leave.

7. On perusal of the material on record, the Trial Court in paragraph 10 has assigned following reasoning in support of direction to the petitioner to deposit Rs.25 Lakh. Paragraph 10 reads as under:

“In the backdrop of claims made by the rival sides regarding the email, the surrounding factors of the email are as follows:

1. Defendant has filed Leave to Defend at Exh.6. Said Leave to Defend is filed through Vipul Karia in capacity of Director of defendant.

- Above email is sent by Vipul Karia. So, it establishes that, the mail has been forwarded by the defendant.

2. Above mail is addressed to mahendramails@gmail.com. It is not the case of defendant that, this email address is not of plaintiff.

- So, above email proves that, it was forwarded by the defendant to the plaintiff.

3. In above email, defendant specifically admitted the liability and assured part-payment.

4. If it is case of defendant that, said email was forwarded to plaintiff by error, then it needs consideration that, the mail is Dt.08.07.2021.

It is not the case of defendant that, thereafter the defendant immediately forwarded another mail to the plaintiff stating that the mail Dt.08.07.2021 was by error.

It means it is only in 2024, through arguments,

the defendant is claiming that, it was by error.

5. If defendant is claiming that, said email was not to be addressed to plaintiff, or that it was erroneously addressed to plaintiff, then burden is on defendant to show as to why said error occurred. If it is case of defendant that, said email was to be forwarded to some other person, against some other transaction and some other liability, then it is defendant who will have to show as to,

-who was that other person,

-what was that other transaction and

-what was that other liability and of what amount.

However, defendant has not pleaded any details about it.

6. Even in Para No.16 of the Leave to Defend, it is not specific case of defendant that, said email was forwarded to plaintiff by error or that said email was to be forwarded to some other person, Para No.16 is in nature of simple denial.”

8. Moreover, it appears that the respondent's claim is supported by the email dated 5 July 2021 addressed to the petitioner. The email which is basis of imposing condition of deposit of Rs.25 Lakh is dated 8 July 2021, which prima facie is in the name of the director of the plaintiff. It is not the case of petitioner that any independent transaction between the director of the petitioner-company and plaintiff had taken place before issuance of such email and such email was sent in recognition of the payment to be

made by the director. Therefore, at this stage, grant of conditional leave by the Trial Court need not be faulted. Hence, there is no jurisdictional error in the impugned order.

9. The writ petition stands dismissed. No costs.

10. However, it will be open for the petitioner to deposit the amount as per the impugned order within four weeks from today.

(AMIT BORKAR, J.)