

VRJ

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

WRIT PETITION NO.10654 OF 2024

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Gurukrupa Machine Tools & Ors.	... Petitioners
V/s.	
Schuler Durocomm GMBH	... Respondent

Mr. Kamalesh P. Mali for the petitioners.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 13, 2024

P.C.:

1. The defendants in a summary suit filed for recovery of an amount based on e-mail which according to the plaintiffs admitted the suit claim. The petitioners are challenging refusal by the Trial Court to condone delay of 2154 days in filing Notice of Motion to set aside order dated 18 January 2017, by which the Trial Court directed Summons for Judgment to proceed without leave to defend.

2. The respondent original plaintiff filed a summary suit for recovery of an amount of Rs.87,77,217/-. According to the respondent, the amount became due based on purchase order bearing No.GMT/P/129 and invoice bearing No.R1112 for amount of 33,500 Euros equivalent to Indian Rupees 24,05,555/-. It was also based on invoice bearing No.R1113 for amount of 50,000

Euros equivalent to Indian Rupees 35,90,381. According to the plaintiff, defendant No.2 by e-mail dated 27 February 2010 assured the plaintiff that he shall transfer the amount raised by the plaintiff against two invoices.

3. It is undisputed that the petitioners filed Vakalatnama in the said suit on 19 October 2015. The Summons for Judgment was served on the petitioners on 15 December 2015. The Trial Court, by order dated 18 January 2017, passed an order to proceed the Summons for Judgment without granting leave to defend.

4. The petitioners filed a Notice of Motion for recalling of order dated 18 January 2017 by contending that the advocate appointed by the petitioners did not inform further progress of the matter to the petitioners. It is only after Covid period, the petitioners got knowledge about the fact of passing of order dated 18 January 2017 and, accordingly, he filed the Notice of Motion.

5. The Trial Court rejected the Notice of Motion recording a finding that the advocate for the petitioners had filed Vakalatnama on 19 October 2015. The Summons for Judgment was served on 15 December 2015, however, till 18 January 2017, the petitioners did not take any step to seek leave to defend. The Trial Court, based on aforesaid circumstances, recorded a finding that the petitioners had sufficient opportunity to seek leave to defend within a reasonable period.

6. In my opinion, the Trial Court based on reasons aforesaid rightly recorded a finding that the defendant was not diligent in contesting the suit. The reason pleaded in the Notice of Motion is

not sufficient to condone delay of 2154 days.

7. On perusal of the impugned order and considering the fact that the petitioners had knowledge of pendency of the suit, the view adopted by the Trial Court for refusing to condone delay of 2154 days cannot be termed as perverse. Exercise of jurisdiction calling for interference under Article 227 of the Constitution of India is unwarranted.

8. Hence, the writ petition is dismissed. No costs.

(AMIT BORKAR, J.)