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

**WRIT PETITION NO. 13516 OF 2024**

Amkette Analytics Limited } ***....Petitioner***

***(Original Defendant)***

***: Versus :***

Bombay Cotton & Yarn Corpn.
Pvt. Ltd. }***....Respondent***

***(Original Plaintiff)***

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**Mr. Daksheesh Vyas** *i/by. Mr. Nishant Vyas and Mr. Yagnesh Vyas, for the Petitioner.*

**Ms. Pooja Thakkar,** *for the Respondent.*

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**CORAM : SANDEEP V. MARNE, J.**

**Dated : 1 October 2024.**

**P.C. :**

1) The petition challenges order dated 28 August 2024 passed by the Learned Judge of the Small Causes Court allowing application at Exhibit-53 filed by the Plaintiff and permitting Plaintiff to produce Certificate under Section 65B of the Indian Evidence Act with further permission to lead evidence to the extent of the said Certificate with liberty to the Defendant to cross-examine Plaintiff's witness.

2) It must be observed at the outset that the Plaintiff has adopted a rather unusual course while prosecuting the suit. Plaintiff filed Debit Notes dated 31 January 2011 and 26 April 2011 without production of Certificate under Section 65-B of the Indian Evidence

Act. Accordingly, the Learned Judge proceeded to mark the said Debit Notes as Article-X and Article-X-1 by order dated 2 January 2020. According to the learned Counsel for the Respondent/Original Plaintiff, such Certificate under Section 65B was inadvertently not filed in respect of the said two Debit Notes. Therefore, the correct course of action which ought to have been adopted by the Plaintiff was to file simple application seeking permission of the Court to file Section 65B Certificate. Instead of doing that, the Plaintiff took a bold stand before the Small Causes Court that it need not produce Section 65B Certificate. In this connection, the relevant pleadings in application at Exhibit-53 read thus :

> I say that the Plaintiff has now considered the pleadings and the evidence pertaining to the said debit notes and thereafter decided to take out the present Application for the reasons as stated hereinafter.
>
> a) The Plaintiff has referred the Debit Note dated 31 January, 2011 and exchange of the letters relating thereto in para 3 and 4 of the Plaint. Debit Note and the letters namely letter dated 16th February, 2011 and 12th May, 2011 are annexed to the Plaint. in para 4 of the Written Statement, the Defendant has admitted the receipt of the Debit Note dated 31st January, 2011 and returned the original Debit Note to the Plaintiff along with its letter dated 16th February, 2011. The Plaintiff has replied to the Defendant's letter dated 16th February, 2011 by letter dated 12th May, 2011. The Defendant has not denied the said correspondence in the Written Statement. Both the letters dated 16th February, 2011 and 12th May, 2011 are annexed to the Plaint. The Defendant has admitted the receipt of the Debit Note dated 31st January 2011 and returned the same along with its letter dated 16th February, 2011. The Defendant has though denied the liability to pay the service tax, however, not disputed the authenticity and the correctness of the contents of the Debit Note. Under the circumstances, non-production of the Certificate under Section 65-B of Evidence Act is inconsequential.

> b) Plaintiff has produced the Debit Note dated 26th April, 2011 at Annexure "I". In para 7 of the evidence, Plaintiff has led sufficient evidence to prove the debit note dated 26th April, 2011. The evidence of the Plaintiff's witness satisfies the requirement of Certificate under Section 65-B of the Evidence Act. I say that the Plaintiff's witness has led sufficient evidence to prove the debit note dated 26th April, 2011 and admit the same in evidence.
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> c) Both the Debit Notes are in respect of the payment of service tax. There was extensive cross examination on the service tax demanded by the Plaintiff and payable by the Defendant. I crave leave to refer to and rely upon papers and proceedings of the above suit when produced.

3) After raising the above pleadings about absence of necessity to produce Section 65B Certificate, Plaintiff prayed in application at Exhibit-53 as under :

> (a)That the Hon'ble Court may recall the order dated 2nd January, 2020 and admit the Debit Notes dated 31st January 2011 and 26th April 2011 in evidence and marked at Exhibits.
>
> (b) The Hon'ble Court may allow the Plaintiff to offer himself for further cross examination limited to two debit notes dated 31st January 2011 and 26th April 2011 by virtual hearing.
>
> (c) For such further and other reliefs as the nature and circumstances of the case may require.

4) When the application at Exhibit-53 was argued, instead of considering the prayers and pleadings in the application at Exhibit-53, the learned Judge erroneously proceeded to observe that '*Plaintiff wants to produce Certificate under Section 65B of Indian Evidence Act and wants to produce the same*'. Mr. Vyas, the learned counsel appearing for the Petitioner would submit that the said observation of the Trial Court is contrary to the pleadings and prayers of the application at Exhibit-53. In my view, Mr.Vyas is not entirely wrong in submitting

so. Be that as it may. The Plaintiff ought to have filed simple application seeking permission of the Court for production of Certificate under Section 65B of the Evidence Act. Instead of doing so, it took a bold stand that production of such Certificate was unnecessary and has later resiled from the said stand and sought permission to produce the said Certificate during the course of oral submissions. The Small Causes Court has imposed costs of Rs.1500/- on the Plaintiff. Adoption of the above unusual course of action by the Plaintiff has necessitated filing of the present petition. Considering the fact that the learned Judge of the Small Causes Court could have otherwise permitted filing of Section 65B Certificate, I am not inclined to disturb the order dated 28 August 2024. However, additional costs are required to be imposed on the Respondent/Plaintiff for filing application at Exhibit-53 by taking a stand that it was not necessary to produce Certificate under Section 65B and later resiling from the said stand while arguing the said application. Accordingly, while the petition is being dismissed, Plaintiff shall additionally pay to Defendant costs of Rs.25,000/- over and above what is directed to be paid by the learned Judge. With the above directions, the Writ Petition is **disposed of.**

NEETA SHAILESH SAWANT

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Date: 2024.10.03 10:38:46 +0530

[SANDEEP V. MARNE, J.]