



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 720 OF 2023

(Vidhan S/o Surendra Bhartia ..Vs.. Smt. Nirali Gaurav Doshi)

with

WRIT PETITION NO. 1439 OF 2023

(Sau. Nirali Gaurav Doshi ..Vs.. Shri Rahul s/o Yudhishtir Bhartia)

with

WRIT PETITION NO. 1433 OF 2023

(Sau. Nirali Gaurav Doshi ..Vs.. Shri Nikunj s/o Devendra Bhartia)

with

WRIT PETITION NO. 1440 OF 2023

(Sau. Nirali Gaurav Doshi ..Vs.. Shri Vidhan Surendra Bhartia)

with

WRIT PETITION NO. 1436 OF 2023

(Sau. Nirali Gaurav Doshi ..Vs.. Shri Ashish s/o Shantikumar Bhartia)

with

WRIT PETITION NO. 1437 OF 2023

(Sau. Nirali Gaurav Doshi ..Vs.. Sau Priti Bhartia)

with

WRIT PETITION NO. 1434 OF 2023

(Sau. Nirali Gaurav Doshi ..Vs.. Sau Natasha s/o Ashiesh Bhartia)

with

WRIT PETITION NO. 1438 OF 2023

(Sau. Nirali Gaurav Doshi ..Vs.. Sau Rashmi Nikunj Bhartia)

with

WRIT PETITION NO. 1435 OF 2023

(Sau. Nirali Gaurav Doshi ..Vs.. Shri Ayush s/o Shantikumar Bhartia)

with

WRIT PETITION NO. 724 OF 2023

(Smt. Natasha W/o Ashish Bhartia ..Vs.. Smt. Nirali Gaurav Doshi)

with

WRIT PETITION NO. 722 OF 2023

(Rahul Yudhishtir Bhartia ..Vs.. Smt. Nirali Gaurav Doshi)

with

WRIT PETITION NO. 723 OF 2023

(Nikunj Devendra Bhartia ..Vs.. Smt. Nirali Gaurav Doshi)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S. P. Dharmadhikari, Senior Advocate assisted by Shri R. D.
Dharmadhikari, Advocate for Petitioners in WP Nos. 720, 722 to 724 of
2023 and for Respondent in WP Nos.1433 to 1440 of 2023
Shri M. P. Khajanchi, Advocate for Respondent in WP Nos. 720, 722 to 724
of 2023 and for Petitioner in WP Nos.1433 to 1440 of 2023.

CORAM : ANIL L. PANSARE J.

Date of reserving the order : 25-7-2024

Date of pronouncing the order : 30-7-2024

Heard.

2. Sau. Nirali Gaurav Doshi, the petitioner in Writ Petition Nos. 1433 to 1440 of 2023, has filed summary suits against members of Bhartia family (hereinafter referred to as 'Bhartia Group'), who are petitioners in Writ Petition Nos. 720, 722, 723 and 724 of 2023.

3. Leave to defend the suits was sought by Bhartia Group. Learned trial Court, vide order dated 29-11-2022, passed in each case, granted leave to Bhartia Group by depositing amount of 50% of the outstanding amount in four suits and in the other suits, granted such leave unconditionally. Nirali is aggrieved by the set of orders passed by trial Court granting leave to defend the suit unconditionally whereas the Bhartia Group is aggrieved by the set of orders granting leave to defend on depositing 50% of the claim amount.

4. Learned counsel for Nirali has invited my attention to the document titled as confirmation of account wherein Bhartia Group has admitted outstanding amount. In addition, learned counsel for Nirali has placed reliance on e-mails exchanged between the parties. One of such e-mails is dated 26-6-2018 written on behalf of Nirali to Harsh Bhartia, a representative of Bhartia Group. Nirali states that amount in Crores of Rupees is outstanding against Bhartia Group and post dated cheques issued in

discharge of liability are being dishonoured, to which Bhartia Group responded by regretting the status and further assured that the amount will be paid through RTGS when funds will be available.

5. In February, 2021, for the first time, the Bhartia Group has taken a stand that nothing is outstanding against Bhartia Group to which the representative of Nirali makes request to share account statements of all the companies of Bhartia Group in order to update her books of account. Accordingly various summary suits are filed by Nirali.

6. The Bhartia Group came up with a case that its factory was closed in the year 2016 and electric supply disconnected in the year 2018 and, therefore, there was no need for him to purchase goods from Nirali. The Bhartia Group placed on record the documentary evidence as regards disconnection of electric supply.

7. The Court below, therefore, found that Bhartia Group has reasonable defence that its factory was closed in the year 2016 and, therefore, had no reason to purchase goods from Nirali. Accordingly, in four suits, the trial Court, in its discretion, has granted leave to defend the suit in terms of Order 37 Rule 3(5) of the Civil Procedure Code on a condition of depositing 50% of the amount of claim.

8. In remaining four suits, the trial Court in addition to aforesaid defence put forth by Bhartia Group, has noticed in the said matters that in the GST invoices relied upon by Nirali in support of the supply of goods, the

vehicle number has been mentioned by which the goods were allegedly supplied to the defendant and further noted that vehicle was a motor car and not a truck. This additional reason weighed in the mind of the trial Court to grant leave to defend the suit without any condition.

9. Learned counsel for Nirali has placed heavy reliance upon the confirmation of account and the response to e-mail given by Harsh Bhartia by which he regretted the dishonour of cheques and assured payment through RTGS.

10. As against, Mr. S. P. Dharmadhikari, the learned Senior Counsel for the Bhartia Group submits that one of their employees, namely, Sandesh Gopalrao Deolasi has, by playing fraud, obtained signatures of Harsh Bhartia on the statement of confirmation account. The First Information Report (FIR) to that effect has been lodged on 6-12-2021.

11. Learned Senior Counsel further submits that trial Court in four cases has granted leave to defend without any condition on the ground that the goods allegedly supplied through vehicle was a motor car and not a truck. This fact, according to learned Senior Counsel speaks volume about the conduct of Nirali and also her credibility. He further submits that this conduct, if considered in the light of plea of Bhartia Group that its factory was closed in the year 2016 and electricity disconnected in the year 2018, the Bhartia Group is entitled to get leave to defend the suit without any condition. Accordingly, he submits that Bhartia Group has

reasonable defence and leave ought to have been granted in all cases without any condition.

12. Having given thoughtful consideration to the submissions made by both the sides, it appears that parties herein have entered into multiple transactions. Nirali claimed that collective outstanding against Bhartia Group is in Crores of Rupees. The mails exchanged further indicate that Bhartia Group had companies in Gadchiroli, Pune, Chandrapur, Tamil Nadu etc. The mails further indicate that Bhartia Group had issued post dated cheques to Nirali and that the cheques were dishonoured. Accordingly Nirali contends that the liability has been admitted by Bhartia Group.

13. The mail exchanged on 21-2-2020, however, discloses a different status. What transpires from the said mail is that Nirali claimed total outstanding amount against Bhartia Group to be Rs. 96,00,000/- approximately. Bhartia Group responded the mail and denied the claim by stating that as per their record, nothing is outstanding at their end. Here, Nirali, while responding to this part of mail, makes a request to Bhartia Group to share account statement of all the companies to update her books of account. She does not assert that the aforesaid amount was indeed outstanding against Bhartia Group.

14. Thus, it appears that Bhartia Group has various companies. Nirali and Bhartia Group had multiple transactions with these companies. In the circumstances, merely because one company of Bhartia Group was closed

in the year 2016 would not be sufficient to infer that post 2016, there were no transactions between the parties. The Bhartia Group has issued post dated cheques and, in a way, admitted liability. Further, it does not disclose to Nirali in the mail exchanged in the year 2018 about closure of the factory in the year 2016 or disconnection of electricity supply in the year 2018.

15. The Bhartia Group for the first time in February, 2020 come up with a case that there is nothing outstanding against them. Surprisingly, Nirali while responding to said mail, requested Bhartia Group to share account statement of its companies to update her books of account. Nirali does not maintain her stand of outstanding amount against Bhartia Group.

16. So far as Bhartia Group lodging FIR in December, 2021 is concerned, the same has been lodged after receiving suit summons, and therefore, *prima facie*, appears to be an after thought.

17. The trial Court, having regards to facts of each case, thought it proper to grant leave to defend the suit by depositing amount of 50% in four cases and in remaining case, without any condition considering the facts, noted above. I do not find any apparent error on the face of record in the approach of the trial Court. No interference therefore, is called for in the writ jurisdiction. The writ petitions are dismissed.

(Anil L. Pansare, J.)