

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5948 OF 2025**

M/s. Unwal Infra Pvt. Limited and Others... Petitioners

Vs.

Sunil Kacholia s/o. Brij Mohan Kacholia ... Respondent

Mr. Arjun Sawant a/w. Mr. Samsher Garud and Ms. Dhvani
Parekh i/b. Jayakar and Partners for the Petitioners.

Mr. Sachin S. Punde a/w. Mr. Suraj B. Jadhav for the
Respondent.

CORAM : GAURI GODSE, J.

DATE : 4th AUGUST 2025

ORDER :

1. This petition is filed by the defendants to challenge the order granting conditional leave to defend on payment of the principal amount towards the invoices. The respondent has filed a suit for recovering the amount towards the invoices. The trial court has granted conditional leave, as there are no documents' produced on record to support the defendants' contention regarding raising any dispute on the quality or quantity of the material supplied.

2. Learned counsel for the petitioners submits that once the trial court holds that it is a triable issue, there was no reason to impose condition for granting leave to defend. He

Digitally signed
by
RAJESHWARI
RAMESH
PILLAI
Date:
2025.08.20
03:10:11 +0200

RAJESHWARI
RAMESH
PILLAI

submits that in the reply, the defendants contended about the rejection and return of the material to the plaintiff on the ground that it failed the test of quality.

3. Learned counsel for the petitioners relies upon the written arguments filed before the trial court to support his submissions that there were oral communications regarding the objections raised on the quality and rejection and return of the material. Learned counsel for the petitioners therefore submits that since triable issues are raised on the quality and quantity of the material allegedly supplied by the plaintiff, there was no reason to impose condition for grant of leave to defend.

4. Learned counsel for the respondent-plaintiff submits that before filing the suit, a notice was issued to call upon the defendants to make payment towards the invoices of the amount. He submits that there was no reply issued by the defendants. He submits that except for making a statement in the reply to the summons for judgment, no material particulars are pleaded and no document is produced to show that the material was rejected and returned.

5. I have perused the papers of the petition. The suit is filed for recovering the amount towards invoices. The

material particulars are pleaded in the plaint alongwith the particulars of delivery challan to support the delivery of the material. A notice was issued before filing the suit which is not replied by the defendants. Thus, in the absence of any documents showing the rejection of the material supplied, the trial court held that plaintiff would be entitled to the amounts based on the documents of invoices and delivery challans. The trial court also referred to the ledger accounts regarding the amounts due and payable and some amounts received and adjusted.

6. Thus, in view of the accepted invoices and no material regarding denial or rejection, the condition for deposit is imposed. There is no dispute that the suit notice was not replied. A perusal of the reply and the written arguments do not reveal any particulars of rejection or return of the material.

7. Learned counsel for the petitioners relied upon the decision of the Hon'ble Apex Court in the case of *IDBI Tursteeship Services Limited vs. Hubtown Limited*¹ to support his submissions that, when triable issues are raised severe conditions should not be imposed and the court must

¹ (2017) 1 SCC 568

take into consideration that the object of the provisions for expeditious disposal of commercial cases is not defeated.

8. Considering the facts and circumstances of the present case, the trial court has found it fit to impose condition on the ground that there are no material particulars pleaded and no documents produced regarding rejection or return of the material supplied. Hence, the trial court granted leave to defend on the condition of deposit. In view of the well-settled legal principles in the decision relied upon by the learned counsel for the petitioners, unless the defendant satisfies the court regarding substantial defence and that the defence is likely to succeed, the plaintiff would be entitled to a judgment. Thus, considering the facts and circumstances of the present case, the trial court has rightly granted conditional leave to defence.

9. I do not see any reason to interfere with the impugned order granting conditional leave to defend. The petition is devoid of merits. Hence, the petition is dismissed.

[GAURI GODSE, J.]