



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.8226/2023

PETITIONER : M/s. SEI Tejas Private Limited,
Through its Authorized Signatory,
Mr. Venkatesen Krishan Having its Registered
Office at 11th Floor, Bascon Futura,
New No.10/2 Old No. 56L, Venkatanarayana
Rd. T Nagar, Chennai, Tamil Nadu 600017.

...VERSUS...

RESPONDENT : VTECH ENGINEERS
Through its Proprietor Mr. Pratik Agarwal,
Having its Registered Office at B-1,
Thakkar Bhavan Handloom Market,
Gandhibagh, Nagpur – 440002.

Mr. A.D. Chaudhari, Advocate for petitioner

CORAM : SACHIN S. DESHMUKH, J.
DATE : 11/07/2025

ORAL JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith. Heard Advocate Mr. A.D. Chaudhari for the petitioner finally. While issuing notice it was indicated that the matter would be taken up for final disposal at the stage of admission. Although the respondent was duly served, however, nobody caused appearance.

2. It is the case of the petitioner that the petitioner is a Company registered under the Companies Act and actively carrying out business in Solar Energy Development. The petitioner further submitted

that the respondent is a Company qualified techno-commercial entrepreneur. As such, the petitioner was in receipt of two work orders from the respondent - Company for the purpose of taking up work in various Districts as per design, supply, installation, testing, commissioning and maintenance for a period of five years of Solar Energy Based Dual Pump. Accordingly, the purchase orders were received by the respondent-Company. Subsequent thereto, the petitioner supplied number of solar power generating systems. Pursuant to the completion of supply, the petitioner raised invoices for the amounts indicated therein. In the process there was an assurance by and on behalf of the petitioner Company that the goods supplied would be good for value and would be of quality specifications i.e. supply, installation, testing, commissioning and maintenance.

3. After the verification of the books of account maintained by the petitioner, it was noted that amount of Rs.66,79,825/- as remained outstanding out of the aforesaid invoices raised by the petitioner. It is pertinent to note that first of all the supply of goods essentially was as specified in terms and conditions of purchase orders were to be satisfied, verified and after such satisfaction by the respondent the bills were raised to be cleared. After continuous persuasion to the respondent in relation to the balance amount to the aforesaid extent since those were kept pending, resulted the petitioner to present

consumer suit under Order 37 of the Code of Civil Procedure. Even in the plaint, more particularly paragraph 3, the plaintiff has made reference to the specifications and guidelines as per the Ministry of New and Renewable Energy (MNRE) and Odisha Renewable Energy Development Agency (OREDA).

4. Thus, the petitioner was also conscious to the fact that essentially the work order should meet the specifications and guidelines issued by the MNRE and OREDA. In the aforesaid backdrop, the assertion is made that the petitioner is entitled for the aforesaid amount and also claimed interest on the recoverable amount from the date which was due as per the contention of the petitioner. After presentation of the suit, the Joint Civil Judge, Junior Division, Nagpur issued summons.

5. In response to the suit summons, the respondent presented an application for grant of leave to defend for the reasons stated in the application so presented. The application so presented by the defendant contains the defence that the plaintiff has not maintained the contract of work order so as to ensure the completion of work during the entire working condition, therefore, prayed for dismissal of the suit. Apart from the aforesaid contention, the contention in regard to the record itself does not fulfill the working terms and conditions of the purchase order. The said application was strongly objected by the petitioner,

stating that leave may not be granted to the defendant unless the amount so raised by the petitioner is deposited.

6. Considering the rival contentions, the learned Trial Court by its order dated 04/09/2023 observed that the terms are not observed satisfied and the systems provided by the petitioner are faulty, as such the same leads to a triable issue. Since it is necessary to ascertain whether terms and conditions of the purchase order were satisfied or not, in absence of this determination which involves triable issue and depending upon the same the entitlement of the petitioner would be considered by the concerned Court. As such, the defendant was permitted to defend suit unconditionally. The said order rendered by the Trial Court is the subject matter of challenge in the present petition.

7. It is the contention of the learned Counsel for the petitioner that the Trial Court has completely erred in granting leave unconditionally and the Trial Court ought to have put the condition or stipulation that the respondent shall deposit the amount as has been raised by the petitioner in the suit. In order to justify the contention, the learned Counsel for the petitioner has heavily relied upon the verdict of the Supreme Court in the case of *B.L. Kashyap and sons Limited Vs JMS Steels and Power Corporation and another (2022) 3 SCC 294*.

8. Having considered the submissions of the petitioner, this Court is of the view that after Rule 3 Order 37 of the Code of Civil

Procedure which has suffered an amendment, “grant of leave to defend is ordinary Rule and denial to leave defend is an exception”. First proviso to Sub Rule 3 makes it abundantly clear that leave to defend shall not be refused, unless the Court is satisfied that the facts disclosed by the defendant do not indicate that a substantial defence is raised or that the defence initiated to be put up by the defendant is frivolous or vexatious. Admittedly, it is a matter of supply of goods and even as has been contended by the petitioner that the supply was rather regulated by the specifications as stated in MNRE and OREDA. The invoice also specifically makes a reference to these specifications incorporated in MNRE and OREDA.

9. Apart from the aforesaid aspect, the principles laid down in *IDBI Trusteeship Services Ltd Vs. Hiltown Ltd. (2017) 1 SCC 568* deal in detail with issue and has eventually held that in the wake of amendment of Rule 3 of Order 37 of the Code on the core, the principle remains the same, “that grant of leave to defend is ordinary rule; and denial of leave to defend is an exception”. Thus, the prayer of leave to defend is to be denied in those cases when the defendant has practically no defence and is unable to offer any defence leading to triable issue before the Court. Necessary reference can be held to paragraph Nos. 33, 33.1 and 33.2 of the judgment in case of *B.L. Kashyap* (supra). As such, this Court is of the considered opinion that the discretion exercised by

the Trial Court while regarding the defence put forth by the petitioner raises triable issue.

10. The Trial Court considering these peculiar aspects more particularly specifications as those are incorporated in the purchase order obligates the petitioner to maintain those and its compliance is to be ascertained by the respondent before the bills so raised by the petitioner are cleared. As has been rightly concluded by the Trial Court, these issues unequivocally can be regarded as triable issue. Therefore, grant of leave to defend the suit unconditionally at this juncture cannot be faulted with, resultantly the petition does not deserve any consideration. Therefore, the writ petition is dismissed. Rule stands discharged. No order as to costs.

11. Needless to state that this Court has not dilated in any manner on the merits of the case which the concerned Court would be dealing in detail.

(SACHIN S. DESHMUKH, J.)