



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 258 OF 2025

DARSHAN VINOD GANGWAL

VERSUS

M/S. KONKAN AGRO MARINE INDUSTRIES PVT. LTD. AND
OTHERS

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Advocate for Applicant : Mr. Fulfagar Anuj Ajay.
Advocate for Respondent/s : Mr. Dixit Sushant V.

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CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 09.03.2026

PRONOUNCED ON : 17.03.2026

FINAL ORDER :

1. Taken up for final disposal with consent of the parties.
2. Being aggrieved by order granting leave to defend to the respondent/defendant in a summary suit with a rider of depositing Rs.33,34,300/-, applicant original plaintiff has preferred this revision application.
3. Applicant has instituted summary suit No.1 of 2025 against the respondents for recovery of Rs.91,89,438/- with interest @ 18% per annum from 01.10.2024. It is contended that there was contract between applicant and defendants to

supply fuel including bagasse. The purchase orders commencing from 15.01.2024 was issued and followed by various orders. In pursuance of the demand, bagasse was supplied from 25.01.2024 to 27.08.2024 to the defendants to the tune of Rs.8605/- M.T. In aggregate goods worth Rs.3,15,05,782/- was supplied and payment of Rs.2,22,93,840/- was received. The outstandings of Rs.91,89,483/- was demanded from time to time by the plaintiffs through various modes including E-mails and the notices. It was not complied with and the suit was required to be filed.

4. Respondents filed application Exh.17 seeking leave to defend the suit setting out pleas in support of the defence. The core plank of the defendants is that the goods supplied by the plaintiff was not up to the requisite standard agreed between the parties. Due to sub-standard quality, defendant sustained loss because they were required to procure coal as a fuel. It is contended that plaintiff was asked to stop the supply. The laboratory test report disclosed that supplied goods was not in conformity with the required standard. It was intimated to the plaintiff through correspondence to improve the quality.

5. By impugned order passed below Exh.17, Trial Court allowed the application on condition of depositing sum of Rs.33,34,300/- in the court or by furnishing bank guarantee of the amount. It is informed by learned counsel appearing for the respondents that bank guarantee was furnished promptly within stipulated period.

6. Learned counsel Mr. Fulfagar appearing for the applicant submits that Trial Court committed manifest illegality in granting leave to defend when there is no dispute for supply of Rs.8605/-M.T. bagasse. The extract of the ledger of 08.10.2024 discloses outstandings of Rs.91,89,483/-. It is submitted that the plea of supply of substandard material is totally after thought and raised after eight months from 27.08.2024. It is submitted that the debit note is bogus and manured to dodge the claim of the plaintiff. It is further submitted that the defendants did not express any reservation for the quality of the goods.

7. It is vehemently submitted by learned counsel Mr. Fulfagar that the correspondence made through E-mail did not refer to sub-standard quality. The application Exh.17 is silent

about the ledger entries. The purchase orders are the invoices. The defendants are bound to pay the amount and there is no valid defence available to them. It is further submitted that the laboratory reports which are tried to be pressed into service are bogus and after thought. The applicant is entitled to decree under Order II Rule 12 of CPC. It is further contended that the furnishing of the bank guarantee is illegal and defendants ought to have been directed to deposit entire outstandings.

8. Per contra, learned counsel Mr. Dixit submits that the defendants have raised the triable issues and the valid plea. The Trial Court is justified in granting leave by imposing conditions. It is submitted that from time to time the reservations about the sub-standard quality was communicated to the plaintiff but there was no improvement. The standard of the goods was fixed between the parties which was not adhered to by the plaintiff which revealed in the laboratory testing. It is submitted that the defendant sustained loss and required to procure coal. It is submitted that no case is made out for granting decree to the plaintiff unless there is objective scrutiny in the summary trial.

9. I have considered rival submissions of the parties. There is no dispute about supply of Rs.8,605/- M.T. worth Rs.3,15,05,782/- from 25.01.2024 to 27.08.2024. The applicant/plaintiff was paid the amount and the outstandings are Rs.91,89,483/- for which claim is setup in the summary suit. The extract of the ledger was supplied by the defendants to the plaintiff which supports the claim of outstanding. The debit note dated 31.03.2025 is relied upon by the Trial Court in arriving at undisputed outstanding of Rs.33,34,300/-.

10. The defence is that the quantity supplied was sub-standard. It can be seen from the purchase orders dated 24.05.2024, 22.06.2024 that coal was required to be procured by the defendant as an alternate fuel. My attention is adverted to the laboratory report produced on record by the defendants to make out a case that the supply was of substandard quality. The correspondence dated 08.04.2025 discloses that there was some dispute regarding quality and the deliberations had taken place at Nagpur. Merely because the supply of goods was not instructed to be stopped at the instance of defendants would not *ipso facto* leads to inference that the goods supplied were of requisite standard.

11. The defendants have raised plausible and triable defence. They have placed on record the laboratory report. An objective scrutiny is required to be made during summary trial. The findings recorded by the Trial court in granting leave cannot be faulted with. It would be in consonance with principles of natural justice to extend opportunity to the defendants.

12. Reliance is placed on the judgment of the learned Single Judge in the matter of *Oriental Aromatics Limited Vs. Poonam D. Bhatiya ; 2024 NCBHC-AS 1624* to bolster that once the goods are delivered and no dispute was raised as to the delivery of the material then any subsequent dispute cannot be termed as substantial defect. The facts of the present case are distinguishable because the defendant raised dispute of quality of the material and there was deliberation between the parties. This judgment will not enure to the benefit of the applicant. The respondent has relied on the judgment of the Supreme Court in the matter of *IDBI Trusteeship Services Limited Vs. Hubtown Limited ; (2017) 1 Supreme Court Cases 568*. It is relevant to notice the principles as follows :

“17. Accordingly, the principles stated in paragraph 8 of Mechelec's case will now stand superseded, given the amendment of Order XXXVII Rule 3, and the binding decision of four judges in Milkhiram's case, as follows:

17.1 If the Defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the Plaintiff is not entitled to leave to sign judgment, and the Defendant is entitled to unconditional leave to defend the suit.

17.2 If the Defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the Plaintiff is not entitled to sign judgment, and the Defendant is ordinarily entitled to unconditional leave to defend.

17.3 Even if the Defendant raises triable issues, if a doubt is left with the trial judge about the Defendant's good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4 If the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both

can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5 If the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the Plaintiff is entitled to judgment forthwith.

17.6 If any part of the amount claimed by the Plaintiff is admitted by the Defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the Defendant in court.”

13. I am of the considered view that principles laid down in para Nos. 17.3 and 17.4 are applicable to the present case. The impugned order cannot be faulted. Few more conditions are required to be added.

14. It is vehemently contended that there is no provision of imposing condition of furnishing bank guarantee by the applicant. The second proviso of Sub Rule 5 of Rule 3 of Order 37 empowers the Court to direct the defendants to deposit admitted amount. It can be said that the admitted amount is Rs.33,34,300/-.

15. It is relevant to notice that Rule 3(5) of Order 37 empowers the Court to impose condition as is found to be just. Therefore, condition of furnishing bank guarantee cannot be said to be out of statutory purview. Besides that, it is laid down by Supreme Court in the judgment of IDBI (supra) in para 17.4 to impose the condition of either depositing or furnishing security. I find no merit in the submissions of the applicant.

16. However, facts remains that the defendants did not promptly report their grievance regarding quality to the plaintiff. After consuming the goods, the endeavour was made to report the sub-standard quality or to expect improvement. The care should have taken by the defendants to examine the quality. I find that the condition of depositing the amount awarded by the Trial Court in the impugned order is inadequate. The ends of the justice would be met in directing the defendants to further deposit Rs.15,00,000/- or to furnish bank guarantee to that extent.

17. For the reasons stated herein above no case is made out to up set the impugned order.

18. Civil revision application is rejected, substantially.

19. Respondents/defendants shall further deposit Rs.15,00,000/- or furnish bank guarantee to that extent within four (4) weeks from today.

20. The defendants shall file written statement within eight (8) weeks from today.

21. The defendants shall co-operate with the Trial Court. Any lapses on their part would entail into adverse action against them.

(SHAILESH P. BRAHME, J.)

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vmk/-