

A M/S. UMA SHANKAR KAMAL NARAIN AND ANR.
v.
M/S. M.D. OVERSEAS LTD.

MARCH 14, 2007

B [DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Code of Civil Procedure, 1908; O.XXXVII R.1:

C *Dishonor of Cheques—Summary suit—Leave to defend—Grant of—
Held: Single Judge of the High Court decreed the suit for recovery of amount—
However, Division Bench of the High Court granting conditional leave to
defend subject to deposit of the decretal amount—Keeping into consideration
the principles of law laid down by the Supreme Court on the subject in
question, it would be appropriate to direct the appellants to deposit the
D decretal amount in the Registry of the High Court failing which the order
of Single Judge would become operative.*

**Respondent-plaintiff had filed a suit in terms of Order XXXVII Rule 1
on the ground that four cheques allegedly issued by defendant No. 2-appellant
E No.2, in favour of plaintiffs/respondents were dishonored. The appellants filed
an application for leave to defend. Single Judge of the High Court found that
the grounds taken in the application for leave to defend were raised only for
the purpose of delaying payment for the amount which was due for payment
and, therefore, refused to grant leave to defend. The plaintiff/respondent was
held to be entitled for decree for recovering the amount along with interest at
F the rate of 12% p.a. from the date of suit till realization. The order was
challenged by the defendant/respondent. The Division Bench of the High Court
directed the appellants to deposit the amount in question in the Registry of
the High Court. Conditional leave to defend was granted to appellants by the
High Court holding that if there is a default in deposit of the amount as
G indicated by the appellant, the order and decree passed by the Single Judge
was to become operative. Hence the present appeal.**

**The appellants contended that the High Court was not justified in
directing the entire decretal amount to be deposited after having held that
leave to defend was to be granted.**

Respondent submitted that the High Court's order is not only fair but it is equitable since the amount which appears to be *prima facie* undisputed is much more than the amount which the High Court has directed to deposit. A

Disposing of the appeal, the Court

HELD: 1.1. The position in law in regard to leave to defend has been explained by this Court as follows: B

(a) If the defendant satisfied the Court that he has a good defence to the claim on merits, the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or *bona fide* or reasonable defence, although not a possibly good defence, the defendant is entitled to unconditional leave to defend. C

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is, if the affidavit discloses that at the trial he may be able to establish a defence to the plaintiff's claim, the Court may impose conditions at the time of granting leave to defend the conditions being as to time of trial or mode of trial but not as to payment into Court or furnishing security. D

(d) If the defendant has no defence, or if the defence is sham or illusory or practically moonshine, the defendant is not entitled to leave to defend. E

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine, the Court may show mercy to the defendant by enabling him to try to prove a defence but at the same time protect the plaintiff imposing the condition that the amount claimed should be paid into Court or otherwise secured. [Para 8] [1037-F-G-H; 1038-A-C] F

Milkhiram (India) Private Ltd. & Ors. v. Chamanlal Bros., AIR (1965) SC 1698; *Mechelec Engineers & Manufacturers v. Basic Equipment Corporation*, [1976] 4 SCC 687; *Sunil Enterprises and Anr. v. SBI Commercial & International Bank Ltd.*, [1998] 5 SCC 354 and *Defiance Knitting Industries (P) Ltd. v. Jay Arts*, [2006] 8 SCC 25, relied on. G

1.2. Keeping in mind the principles laid down by this court, it would be appropriate to direct the appellants to deposit a sum of Rs.20,00,000/- within a period of three months in the Registry of the High Court. If the amount is not deposited within the time stipulated, the order shall not be operative and H

A the order passed by the Single Judge would become operative.

[Para 10] [1038-A-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1344 of 2007.

B From the Judgment and Order dated 13.03.2006 of the High Court of Delhi at New Delhi in Regular First Appeal (OS) No. 18-19 of 2006.

Rohini Musa and Binu Tamta for the Appellants.

Manjula Gupta for the Respondent.

The Judgment of the Court was delivered by

C DR. ARIJIT PASAYAT, J. 1. Leave granted.

D 2. Challenge in this appeal is to the order passed by a Division Bench of the Delhi High Court granting conditional leave to the appellants to defend in a summary suit in terms of Order XXXVII Rule 1 of the Code of Civil Procedure, 1908 (in short the 'CPC'). Appellants are the defendants in the said suit. The appellants filed an application for leave to defend in the same suit. Learned Single Judge of the High Court found that the grounds taken in the application for leave to defend were sham and moonshine. The plaintiff/respondent had filed the suit in terms of Order XXXVII Rule 1 based upon four cheques which were purportedly issued by defendant No. 2 i.e. appellant **E** No.2 herein, in favour of the plaintiffs/respondents. The cheques were dishonored with the remark that the payments were stopped by the drawer.

F 3. The learned Single Judge after considering the various stands taken in the petition came to hold that the defence as raised by the defendants is a moonshine defence and the same is raised only for the purpose of delaying payment for the amount which is due for payment. Learned Single Judge refused to grant leave to defend. The plaintiff was held to be entitled for decree for recovery of the concerned amount i.e. Rs.39,30,856/- along with interest at the rate of 12% p.a. from the date of suit till realization. The plaintiff was also held to be entitled to cost. The said order was challenged in RFA (OS) Nos. 18 and 19 of 2006. **G**

H 4. Stand of the appellants was that the defence was not moonshine as was observed by a learned Single Judge. The High Court noted that there was no substantial stand of the appellants, particularly in relation to the plea regarding whether the transaction took place between the parties and whether any sales tax forms were given or required to be given.

5. It was contended by the appellants before the High Court that the issue relating to the delivery of the goods could not have been decided by learned Single Judge. The High Court was of the view that there was no substance in the argument. There is a presumption in favour of any negotiable instrument which has been executed in favour of a party in whose favour the instrument has been drawn. However, the Division Bench felt that on perusal of application for leave to defend it was of the considered opinion that the case would fall in the category where interest of justice would be met if direction for deposit should be made. The appellants were directed to deposit the amount of Rs.39,30,856/- to the registry of the High Court. Conditional leave to defend in the aforesaid circumstances was granted to the appellants. Respondent wanted liberty to withdraw the amount on deposit. High Court refused to accede to the prayer. However, it was permitted to move appropriate application before learned Single Judge for withdrawal of the amount, if any. It was observed by the High Court that if there is a default in deposit of the amount as indicated by the appellant, the order and decree passed by the learned Single Judge was to become operative.

6. According to learned counsel for the appellants the High Court was not justified in directing the entire decretal amount to be deposited after having held that leave to defend was to be granted.

7. Learned counsel for the respondent on the other hand submitted that the High Court's order is not only fair but it is equitable. The amount which appears to be *prima facie* undisputed is much more than the amount which the High Court has directed to deposit.

8. The position in law has been explained by this Court in *Milkhiram (India) Private Ltd. & Ors. v. Chamanlal Bros.* AIR (1965) SC 1698 and *Mechelec Engineers & Manufacturers v. Basic Equipment Corporation* [1976] 4 SCC 687. In *Sunil Enterprises and Anr. v. SBI Commercial & International Bank Ltd.* [1998] 5 SCC 354, the position was again highlighted and with reference to the aforesaid decisions it was noted as follows:

- (a) If the defendant satisfied the Court that he has a good defence to the claim on merits, the defendant is entitled to unconditional leave to defend.
- (b) If the defendant raises a triable issue indicating that he has a fair or *bona fide* or reasonable defence, although not a possibly good

A defence, the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is, if the affidavit discloses that at the trial he may be able to establish a defence to the plaintiff's claim, the Court may impose conditions at the time of granting leave to defend the conditions being as to time of trial or mode of trial but not as to payment into Court or furnishing security.

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(d) If the defendant has no defence, or if the defence is sham or illusory or practically moonshine, the defendant is not entitled to leave defend.

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(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine, the Court may show mercy to the defendant by enabling him to try to prove a defence but at the same time protect the plaintiff imposing the condition that the amount claimed should be paid into Court or otherwise secured.

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9. The said principles were recently highlighted in *Defiance Knitting Industries (P) Ltd. v. Jay Arts* [2006] 8 SCC 25.

E

10. Keeping in mind the principles laid down by this court in several cases noted above, we think it would be appropriate to direct the appellants to deposit a sum of Rs.20,00,000/- within a period of three months in the registry of the High Court. If the amount is not deposited within the time stipulated, the order shall not be operative and the order passed by the Single Judge would become operative.

11. The appeal is disposed of accordingly. No costs.

F

S.K.S.

Appeal disposed of.