

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.1662 OF 2017

O R D E R

The petitioner is the defendant in O.S.No.954 of 2015 on the file of the learned XIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar. This summary suit under Order 37 CPC was filed for recovery of a sum of Rs.1,15,04,542/- along with future interest. The petitioner/defendant filed I.A.No.640 of 2015 in the said suit under Order 37 Rule 3(5) CPC seeking the leave of the Court to defend the suit. By order dated 25.10.2016, the trial Court granted him leave to contest the suit subject to deposit of a sum of Rs.40,00,000/- within a time frame. Aggrieved by the condition imposed, the petitioner/defendant is before this Court by way of this revision petition filed under Article 227 of the Constitution.

Heard Smt. G.Jyothi Kiran, learned counsel for the petitioner/defendant, and Sri P.Surya Narayana Murthy, learned counsel representing Sri R.V.Prassad, learned counsel on caveat for the respondent/plaintiff.

Order 37 Rule 3(5) CPC provides that when the defendant applies for leave to defend a summary suit, the trial Court has the discretion to grant him such leave either unconditionally or upon such terms as may appear to be just. The second proviso thereunder mandates that where part of the amount claimed by the plaintiff in such summary suit is admitted by the defendant to be due from him, leave to defend the suit should not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

In the present case, the plaint averments are to the effect that the respondent/plaintiff advanced Rs.67,00,000/- to the petitioner/

defendant on 31.08.2012 towards advance sale consideration for a plot to be arranged by the petitioner/defendant. Ten promissory notes were said to have been executed by the petitioner/defendant on the said date for the amount advanced. As the alleged sale transaction fell through, the summary suit was filed for recovery of the advanced amount along with accumulated and future interest.

In the affidavit filed in support of the subject I.A., the petitioner/defendant admitted that the respondent/plaintiff had advanced to him a sum of Rs.40,00,000/- and that the elder brother of the respondent/plaintiff had given him Rs.15,00,000/-, at the behest of the respondent/plaintiff. He asserted that his signatures were forcibly obtained on blank stamped papers and that the Memorandum of Understanding dated 05.10.2012, prepared by the respondent/plaintiff and his brother, was false. He further claimed that he had paid Rs.18,00,000/- to the respondent/plaintiff in the year 2014 itself. Reliance in this regard was placed by him upon his lawyer's reply-notice dated 04.07.2015.

It appears that the parties tried to settle the matter out of Court. However, these attempts came to naught and the trial Court recorded on 14.09.2016, that the compromise had not worked out as the petitioner/defendant had only paid Rs.12,00,000/- out of the settlement amount of Rs.1,02,00,000/-.

Smt. G.Jyothi Kiran, learned counsel, would contend that the petitioner/defendant paid to the respondent/plaintiff a sum of Rs.30,00,000/- in all, i.e., Rs.18,00,000/- in the year 2014 and Rs.12,00,000/- in the course of compromise talks. This claim is refuted by Sri P.Surya Narayana Murthy, learned counsel. He would assert that only a sum of Rs.12,00,000/- has been paid. He would

deny the payment of Rs.18,00,000/- by the petitioner/defendant in the year 2014, as claimed by him.

Smt. G.Jyothi Kiran, learned counsel, would also contend that as her client already paid a sum of Rs.30,00,000/- as against the admitted amount of Rs.40,00,000/-, the condition to deposit a further sum of Rs.40,00,000/- is onerous and wholly unwarranted. She would therefore pray that the petitioner/defendant be granted unconditional leave to defend the suit.

On the other hand, Sri P.Surya Narayana Murthy, learned counsel, would point out that the petitioner/defendant's own undertaking dated 10.08.2016 filed before the trial Court demonstrates that, having paid the sum of Rs.12,00,000/-, he himself undertook that he would pay a further sum of Rs.30,00,000/- on or before 26.08.2016, which he failed to do. Learned counsel would therefore assert that the above unfulfilled promise made by the petitioner/defendant negates his present claim that he already paid most of the admitted amount.

It would be premature at the present stage for this Court to go into the quantum of the amounts actually paid by the petitioner/defendant to the respondent/plaintiff. This aspect of the matter would have to be decided by the trial Court after both parties adduce evidence. For the purpose of deciding this case, it would be sufficient to go by the petitioner/defendant's own pleadings. In the affidavit filed in support of the subject I.A., the petitioner/defendant himself referred to his reply-notice dated 04.07.2015, addressed through counsel. Perusal of para 8 thereof indicates that it was asserted therein that he had paid a sum of Rs.10,00,000/- through bank and Rs.8,00,000/- by cash in two installments, viz., Rs.5,00,000/- and

Rs.3,00,000/- respectively, in all, Rs.18,00,000/-. Further, in para 10 of the said reply-notice, the counsel for the petitioner/defendant stated that he was ready and expressed his willingness to repay the actual amount of Rs.55,00,000/-, which had been taken by him from the respondent/plaintiff and his brother, with interest at the rate of 24% as demanded, after deducting the amount of Rs.18,00,000/-.

Smt. G.Jyothi Kiran, learned counsel, placed reliance on ***IDBI TRUSTESHIP SERVICES LIMITED V/s. HUBTOWN LIMITED***¹. Therein, the Supreme Court observed that after amendment in 1976, Order 37 Rule 3 CPC vests the trial Judge with the discretion to refuse leave to defend or to grant conditional or unconditional leave to defend. It was observed that at one end of the spectrum is unconditional leave to defend, granted in all cases which present a substantial defence, and at the other end are frivolous or vexatious defences, leading to refusal of leave to defend. In between these two extremes, are various kinds of defences raised, which yield to conditional leave to defend in most cases, and it is in these cases, broad principles need to be applied by the trial Court so that justice is done on the facts of each given case. The Supreme Court thereupon encapsulated the principles applicable. In so far as the present case is concerned, it would suffice to refer to the principle enunciated in Para 17.6, which reads as under:

‘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.’

¹ (2017) 1 SCC 568

In terms of this principle, which reiterates the second proviso to Order 37 Rule 3(5) CPC, 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, notwithstanding a substantial defence being raised, should not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

Accepting the plea of Smt. G.Jyothi Kiran, learned counsel, without prejudice to the respondent/plaintiff, that the amount allegedly advanced by the brother of the respondent/plaintiff should be excluded presently as he is not a party to the summary suit, the fact remains that the admitted amount received in the year 2012 by the petitioner/defendant from the respondent/plaintiff alone, is Rs.40,00,000/-. The petitioner/defendant also admitted that the rate of interest payable by him thereon is 24% per annum. Given this rate of interest, accepting without prejudice that the principal is only Rs.40,00,000/-, the net sum due and payable as on date by the petitioner/defendant would be over Rs.78,00,000/-, adopting just the simple interest payable for a period of four years.

That being so, even if the claim of the petitioner/defendant that he paid Rs.30,00,000/- is accepted, without prejudice to the respondent/plaintiff, he would still be liable to pay a further sum of Rs.48,00,000/- at the very least. The condition to deposit a sum of Rs.40,00,000/-, imposed by the trial Court for grant of leave to defend the suit, therefore cannot be said to be onerous, as it would still be within the amount admittedly due and payable by the petitioner/defendant, attracting the second proviso to Order 37 Rule 3(5) CPC. On the above analysis, this Court finds no error in the

exercise of discretion by the trial Court in this regard. The order under revision therefore does not warrant interference.

The Civil Revision Petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

11th APRIL, 2017

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