THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

CIVIL REVISION PETITION NO.6944 OF 2018

ORDER:

Mr. Nagalinga Reddy, the revision petitioner, is aggrieved by the order dated 04.08.2018, passed by the I Additional Chief Judge, City Civil Court, Secunderabad, whereby the Learned Judge has allowed the interlocutory application filed by the respondent and directed the full-fledged trial to be conducted, and permitted the respondent to defend his case.

Briefly stated the facts of the case are that the petitioner is a businessman by profession. According to him, the respondent No.1 used to take loans from the petitioner, on and off, for his personal necessities; respondent No.2 used to be the guarantor for such loans. According to the petitioner, after the closure of the earlier transaction that took place, the respondent No.1 took a hand loan of Rs.7,50,000/- on 01.12.2015. Against the said loan, the respondent No.1 executed a promissory note, and to which respondent's younger brother, Mr. A. Chanakya Rao, was an eye-witness. The respondent No.1 promised to repay the loan amount with interest at the rate of 24% per annum.

Even thereafter, in January, 2016, the respondent No.1 sought a further loan of Rs.10,00,000/-. Despite the fact that the earlier loan of Rs.7,50,000/- was not repaid, but due to the intimacy of the parties, the petitioner gave a loan for Rs.8,00,000/- to the respondent No.1. The respondent No.1 acknowledged the same on 05.02.2016, by executing a promissory note, undertaking to repay both the loan amounts within four months i.e., on or before 01.07.2016. The petitioner further alleged that respondent No.1 owns certain property which he was willing to submit as security for the debt. However, as the respondent No.1 failed to repay the loan amount, the petitioner filed the suit against the respondent Nos.1 and 2 under Order XXXVIII Rules 1 and 2 read with Section 26 of CPC.

After receiving the summons from the learned Trial Court, the respondent No.1 filed his counter-affidavit wherein he admitted that prior to 2015 he had taken certain loans from the petitioner. However, he had cleared the said loans. He further claimed that thereafter he had not taken any loan from the petitioner. Instead, while taking the loan in the year 2015, the petitioner had asked him to sign certain blank promissory notes and blank cheques. Even after clearing the loans in 2015, even after asking the petitioner to return the blank promissory notes and blank cheques, the petitioner informed the respondent No.1 that since the promissory notes and the blank cheques were misplaced, the same could not be returned for the time being. However, subsequently, according to the respondent No.1, the blank promissory notes and the blank cheques have been misused by the petitioner. The respondent No.1 has also categorically denied that he has taken hand loans from the petitioner subsequent to 2015.

Thereafter, the respondent No.1 has filed an interim application seeking full-fledged trial instead of summary trial under Order XXXVII CPC after hearing both parties, by the impugned order, the application has been allowed. Hence this petition application before this Court.

Mr.A.Srinivas Reddy, the learned counsel for the petitioner, has vehemently contended that, since the respondent No.1 had admitted the fact that he had received a loan in 2015, he could not have sought a full-fledged trial. Secondly, according to the petitioner, he had sent a message from his mobile phone with regard to the alleged loans of 2017. He had clearly written in the message that "the respondent would keep his word and commitment" to which the respondent No.1 and reply 'yes' he would. Therefore, according to the learned counsel, the respondent No.1 has already admitted the fact that he had indeed taken loans in the post-2015 period. Once such an admission was made, the Trial court was not justified in passing the impugned order. The learned counsel has relied on the case of **IDBI Trusteeship Services Ltd. v. Hubtown Ltd**[1] in order to plead that the learned trial Court is unjustified in directing a full-fledged trial in the present case.

Heard the learned counsel, perused the impugned order as well as the record.

Undoubtedly, in the plaint filed by the petitioner, he has claimed that they were certain transactions between him and the respondent No.1 prior to 01.12.2015, which were closed. Thereby meaning that the loan that was taken prior to 01.12.2015 was repaid. Therefore, the petitioner begins with the story from the loan that was allegedly taken on 01.12.2015 i.e., for the alleged amount of Rs.7,50,000/-. He further claims in January, 2016, a further loan of Rs.8 lakhs was taken by the respondent No.1.

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[1] 2017 (1) ALD 76 (SC)

However, a bare perusal of the counter-affidavit filed by the respondent No.1 clearly reveals that he has clearly stated that he had borrowed some amounts from the petitioner prior to 2015 which he had cleared, and the amount was transferred to the Current Account held by the petitioner. In para 5, he specifically denies the allegation that he had borrowed Rs.7,50,000/- from the petitioner. In para 6, he also specifically denies that he had borrowed an amount i.e., Rs.8 lakhs in January, 2016 from the petitioner. In fact, in para 6, he alleges that he had borrowed some amount from the plaintiff in 2015. With regard to this particular loan prior to December 2015, the petitioner had obtained two blank undated promissory notes and two undated blank cheques bearing Nos.039769 and 039770 drawn on ICICI Bank, Karimnagar branch. He further alleges that these Negotiable Instruments have been misused by the petitioner. In para 7, it is specifically denied that a telephonic message was sent by the respondent No.1 to the petitioner.

Once there is an allegation and denial of the same, obviously certain issues with regard to the facts in issue need to be framed by the learned trial Court. Since the defendant has totally denied the case of the petitioner as stated in the plaint, the respondent No.1 owed to necessarily has to be given an opportunity to defend his position. Therefore, the learned trial court has certainly justified in allowing the interim application filed by the respondent No.1.

Although the learned counsel for the petitioner has relied upon the case of **IDBI Trusteeship Services Ltd.** (supra), but the principles stated therein do not support the case of the petitioner. In the said case the Apex Court has laid down the following principles, while considering the issue whether to grant leave to defend in a summary suit.

The principles laid down are as under:

(i) 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;

(ii) 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;

(iii) The question whether the defence raises a triable issue or not has to be ascertained by the court from the pleadings before it and the affidavits of parties and it is not open to it to call for evidence at that stage.

(iv) 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;

(v) 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.

(vi) 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.

(vii) 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.

As mentioned hereinabove, the respondent has raised probable and plausible defence to the suit filed by the petitioner. For, he has not only questioned, but also denied the fact that any loan was taken by him on 01.12.2015, or in the years 2016, 2017 he has also questioned the genuineness and the veracity of the promissory note and the blank cheques allegedly singed by him. He has also denied that he sent any reply to any statement made by the petitioner to the SMS message. Thus, the learned Judge was legally justified in allowing the application filed by the respondent No.1.

For the reasons stated above, this Court does not find any merit in the present Civil Revision Petition. Thus, it is, hereby, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAGHVENDRA SINGH CHAUHAN, J)

Date: 30.11.2018

MRKR