

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.2339 of 2019

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.11-07-2019 in I.A.No.308 of 2019 in O.S.No.9 of 2019 of the XI Junior Civil Judge, City Civil Court, Secunderabad.

2. Petitioner herein is plaintiff in the said suit.
3. He filed it invoking Order 37 C.P.C. for recovery of Rs.2,03,655/- with interest @ 12% p.a., contending that respondent had borrowed Rs.1,50,000/- from him on 09-01-2016 and executed a demand promissory note apart from stamped receipt, and after petitioner demanded repayment of the loan, a cheque was issued by respondent for the said amount drawn on Syndicate Bank, which was dishonoured.
4. The respondent then filed I.A.No.308 of 2019 seeking leave to defend the suit.
5. In the affidavit filed in support of this application, the respondent, from paragraphs-1 to 18, contended that he had a strong case, balance of convenience in his favour and his defences are genuine, *bona fide* and are not tainted with *mala fides* and filing of the suit itself is abuse of process of Court.

6. According to him, petitioner did not come to the Court with clean hands. He also pleaded that the documents filed by petitioner is fabricated. In paragraph-20, another pleading is taken i.e.

“20. I submit that it is pertinent to mention that the respondent/plaintiff having collected an amount of Rs.1,20,000/- (Rupees One lakh twenty thousand only) on 3.9.2014 and balance amount of Rs.30,000/- (Rupees thirty thousand only) on 29.1.2016, having acknowledged the same, failed to return the blank stamped receipt, demand promissory note and blank cheques and withheld them wrongfully and presented them by taking a cause and putting an unfound cause into action. I reserve my right to proceed against him for breach of trust and cheating independently and separately.”

7. Except this bald pleading on merits, nothing else is stated as to when loan was actually taken by him, for which he made the payment of Rs.1,20,000/- on 03-09-2014.

8. The Court below allowed I.A.No.308 of 2019 and granted unconditional leave to respondent to defend the suit simply stating that there is substantial defence and the *bona fides* of the defendant of defendant/respondent is triable issue.

9. Not a whisper is contained in the order what actually is the defence set up by the respondent.

10. It is settled law that unconditional leave to defend can be granted if the defendant satisfies the Court that defendant has a good case on merits and if he raises a *bona fide* issue and the defence is not illusory or sham or practically moon shine.

11. In my considered opinion, the defence set up by respondent/defendant in I.A.No.308 of 2019 is vague and the Court below could not have granted to the respondent unconditional leave to defend the suit.

12. Accordingly, the Civil Revision Petition is allowed in part; the order dt.11-07-2019 in I.A.No.308 of 2019 in O.S.No.9 of 2019 of the XI Junior Civil Judge, City Civil Court, Secunderabad is set aside; and I.A.No.308 of 2019 is disposed of directing the respondent to deposit 50% of the suit claim to the credit of XI Junior Civil Judge, City Civil Court, Secunderabad within six (06) weeks from the date of receipt of copy of this order as a condition precedent for being allowed to defend the suit filed by petitioner. No costs.

13. Consequently, miscellaneous petitions pending, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

Date: 30-01-2020
Vsv