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C.R.P.No.4262 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4262 of 2022

and

C.M.P.No.22372 of 2022

Mr.K.Sri.Sashidran

... Petitioner

Vs.

M/s. Amazon India
(Amazon Seller Services Private Limited)
Rep by its Vice President and Country Head
Brigade Gateway,
8th Floor, 26/1, Dr. Rajkumar Road,
Malleshwaram(W),
Bangalore – 560055, Karnataka, India.
Also at Block E, 14th Floor, Unit No.1401 to 1421,
International Trade Tower,
Nehru Place, New Delhi – 110019.

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 07.09.2022 made in I.A.No.2 of 2022 in O.S.No.4850 of 2021 on the file of the Learned XXII Assistant City Civil Court in Chennai.

For Petitioner : Mr.Ajay Francis Inigo Loyola

For Respondent : Mr.Rahul Balaji



ORDER

The Civil Revision Petition has been filed against the order dated 07.09.2022 passed in I.A.No.2 of 2022 in O.S.No.4850 of 2021.

2. The Revision Petitioner is the plaintiff, who instituted a Suit for recovery of his salary against the respondent, who was the employer, under whom the petitioner served.

3. The respondent filed an Interlocutory Application in I.A.No.2 of 2022 under Order XXXVII Rule 3(5) of the Code of Civil Procedure to grant unconditional leave to defend the Suit. The said Interlocutory Application was allowed by the Trial Court mainly on the ground that the dispute between the parties for payment of salary for the month of January 21. The Trial Court found that the plaintiff has not filed any admissible documents to show that he had continued in service with the company of the defendant till 31 January 2020. Ex.P1 would show that his service was extended till January 2021, but the validity of those documents shall be decided only during the course of trial. Further, the plaintiff had not stated in writing regarding the payment as claimed in the Suit to be decided after trial. In such circumstances, the Trial Court arrived at a conclusion that the



right of the defence to the respondent need not be denied.

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4. The right to defend the Suit is a basic right. Such a right to defend the Suit need not be taken away unnecessarily. Only in exceptional circumstances, such a right is to be dispensed with. If the admissions made by the defendant is sufficient enough to form final opinion for granting the relief or to decline the same.

5. The learned counsel for the respondent relied on the judgement of the Hon'ble Supreme Court of India in the case of ***State Bank of Hyderabad Vs. Rabo Bank*** reported in ***[(2015) 10 SCC 521]***, wherein the Apex Court made the following observations:

“15. As regards the entitlement of a defendant to the grant of leave to defend, the law is well settled long back in the year 1949 in Kiranmoyee Dassi v. J. Chatterjee [1945 SCC OnLine Cal 114 : AIR 1949 Cal 479] , in the form of the following propositions: (SCC OnLine Cal para 42)

“(1) If the defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is



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not entitled to leave to sign the judgment and the defendant is entitled to unconditional leave to defend.

(2) If the defendant raised a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(3) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence yet shows such a stage of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing



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security.

(4) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(5) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence.”

16. It is also noticed that the law as enunciated above, has been followed by the courts in several cases [see also Santosh Kumar v. Bhai Mool Singh [AIR 1958 SC 321] , Milkhiram (India) (P) Ltd. v. Chamanlal Bros. [AIR 1965 SC



1698], *Mechelec Engineers & Manufacturers v. Basic Equipment Corpn.* [(1976) 4 SCC 687] and *Sunil Enterprises v. SBI Commercial & International Bank Ltd.* [(1998) 5 SCC 354]].

17. An analysis of the above principles makes it clear that in cases where the defendant has raised a triable issue or a reasonable defence, the defendant is entitled to unconditional leave to defend. Leave is granted to defend even in cases where the defendant upon disclosing a fact, though lacks the defence but makes a positive impression that at the trial the defence would be established to the plaintiff's claim. Only in the cases where the defence set up is illusory or sham or practically moonshine, is the plaintiff entitled to leave to sign judgment.

18. Insofar as the question of maintainability of the suit in question under Order 37 CPC is concerned, this Court has in Neebha Kapoor v. Jayantilal Khandwala [(2008) 3 SCC 770 : (2008) 1 SCC (Civ) 929] observed that where the applicability of Order 37 itself is in question, grant of leave to defend may be permissible. The court before passing a decree is entitled to take into consideration the consequences therefor. The courts dealing with



summary trials should act very carefully taking note of the interests of both the parties. Merely on the ground that the defendant may resort to prolonged litigation by putting forth untenable and frivolous defences, grant of leave to defend cannot be declined. At the same time, the court must ensure that the defendant raises a real issue and not a sham one. The court cannot reject the defence on the ground of implausibility or inconsistency. Before recording a finding of granting leave to defend, the Court should assess the facts and come to the conclusion that if the facts alleged by the defendant in the affidavit are established, there would be a good or even a plausible defence on those facts.

19. Although the affidavit does not positively and immediately make it clear that he had a defence, yet, it shows such a state of facts leading to the inference that at the trial of the action, the defendant may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to the judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security (see T. Sukender



Reddy v. M. Surender Reddy [1998 SCC OnLine AP 217 : (1998) 3 ALD 659]).

20. We are in total agreement with the view taken by this Court in Raj Duggal v. Ramesh Kumar Bansal [1991 Supp (1) SCC 191] that leave to defend the summons for judgment shall always be granted to the defendant when there is a triable issue as to the meaning or correctness of the documents on which the claim is based or the alleged facts are of such nature which entitle the defendant to interrogate or cross-examine the plaintiff or his witnesses.”

6. In the present case, the respondent / employer raised several issues with reference to the allegations set out in the plaint. Further, the salary being claimed in the plaint is with reference to the employer / employee relationship and thus, the issues are to be adjudicated.

7. In view of the facts and circumstances, this Court is of the opinion that the issues raised between the parties are to be tried with reference to documents and evidences and there is no infirmity as such in respect of the order passed by the Trial Court.



8. Accordingly, the order dated 07.09.2022 passed in I.A.No.2 of 2022 in O.S.No.4850 of 2021 is confirmed and consequently, the Civil Revision Petition in C.R.P.No.4123 of 2023 stands dismissed.

9. The Trial Court shall proceed with the trial and dispose of the same as expeditiously as possible. Unnecessary adjournments are to be avoided and the parties are directed to co-operate by not seeking adjournments on flimsy grounds. In such an event, the Trial Court shall impose maximum costs on the person, who seeks unnecessary adjournments.

However there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

23.01.2023

Skr/Jeni
Index : Yes
Neutral Citation : Yes
Speaking order

To

The Judge,
XXII Assistant City Civil Court,
Chennai.



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S.M.SUBRAMANIAM, J.

Skr

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