

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY, THE TWENTIETH DAY OF MARCH
TWO THOUSAND AND TWENTY THREE**

**PRESENT
THE HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU**

CIVIL REVISION PETITION NO: 612 OF 2021

Petition under Article 227 of Constitution of India, aggrieved by the order dated 14/10/2020 in EA No.1175 of 2019 in OS No.1493 of 2019 on the file of the Court of the I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad.

Between:

Gokavarapu Venkateswarlu, S/o.G.Maraiah, R/o.H.No.3-7/1, Mallkarjunagar, Peerzadiguda, Ghatkesar Mandal, Ranga Reddy District.

...PETITIONER

AND

Mataji Jewellers, Rep.by Sri Manik Chand Srivi Parihar, 1-62, Mallikarjuna Nagar, Peerzadiguda, Ghatkesar Mandal, Ranga Reddy District.

...RESPONDENT

IA NO: 1 OF 2021

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to suspend the operation of the impugned order dt.14.10.2020 passed in IA No.1175 of 2019 in OS No.1493 of 2019 on the file of Hon'ble I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

For the Petitioner : SRI N.R.BHAGAVAN, Advocate

For the Respondent : SRI BAGLEKAR AKASH KUMAR, Advocate

The Court made the following: ORDER

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.R.P.NO.612 of 2021

JUDGMENT :

This Civil Revision Petition has been filed by the petitioner, who is defendant in OS.No.1493 of 2019 on the file of I Additional Senior Civil Judge, Ranga Reddy at L.B.Nagar. Being aggrieved by the orders of the trial Court in IA.No.1175 of 2019 dated 14-10-2020, where under the request of the petitioner to grant leave to defend a suit filed by the respondent/plaintiff was allowed but on condition to deposit 50% half of the suit claim before the trial Court, the petitioner/defendant preferred this Civil Revision on the following grounds.

2. The trial Court having observed in the order impugned that there is a triable issue with regard to payment of an amount of Rs.4,50,000/- by the petitioner which was deliberately suppressed by the respondent in the plaint, ought not to have imposed such a condition with a direction to the petitioner to deposit half of the suit claim. The trial Court ought to have seen even as per the alleged legal notice dated 09-01-2019 got issued by the respondent, there was a demand for a sum of Rs.8,90,006/- but whereas the suit was filed in June, 2019 with an

unjust claim of Rs.12,74,866/- and basing on this, the trial Court imposed a condition on the petitioner/defendant to deposit half of the suit claim. The petitioner has claimed that the Court below ought to have seen that the respondent failed to explain the suit claim in a proper way. The respondent included charges of legal notice which would be granted if this suit was decreed on merits on contest by both sides. But the Court below mechanically imposed the condition of depositing half of the suit claim under the guise of security. Therefore, according to the petitioner, the trial Court is not justified in directing the petitioner to deposit half of the suit claim in this suit. The petitioner further stated that the trial Court ought to have seen that the Hon'ble Supreme Court in a case between '*M/s Uma Shanker Kamal Narain & Anr. vs MD. Overseas Limited*' in Civil Appeal No.1334 of 2007 arising out of SLP.No.7593 of 2006 noted as follows:

- a) If the defendant satisfied the Court that he has got 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.

3. Therefore, the petitioner has claimed that in the instant case, the Court below having come to a right conclusion that there is a triable issue, allowed the interlocutory application granting leave to the petitioner to defend the suit, imposed a condition directing him to deposit half of the suit claim which according to the petitioner, incorrect, thereby, the petitioner thought for setting aside the order.

4. As could be seen from the order impugned in the present revision, it shows that the respondent/plaintiff filed OS.No.1493 of 2019 for recovery of money and the petitioner having appeared before the Court below filed an interlocutory application vide IA.No.1175 of 2019 under Order XXXVII Rule 3 r/w Section 151 of C.P.C. and sought leave to defend the suit filed by the respondent/plaintiff. As per the affidavit filed in support of the petition, the petitioner/defendant has claimed that he received a notice from the Court and he has appeared before the trial Court and obtained permission to engage an Advocate. The respondent/plaintiff filed the suit for recovery of money but the petitioner has claimed that he has paid the entire amount in cash but out of the acquaintance with the respondent, he did not obtain any receipt. Therefore, the petitioner has claimed that he has got good defence in the above suit.

5. The petitioner has further claimed that the respondent/plaintiff has filed the suit for recovery of Rs.12,74,866/- and during the course of time, he has paid a sum of Rs.4,50,000/- towards interest plus principal amount but the respondent/plaintiff did not admit the said payment. The petitioner has claimed that he has received a notice from the respondent and in the said notice, he was asked to pay Rs.8,90,000/-, whereas, the suit is filed for more than 12,00,000/-. Thereby, the petitioner/defendant sought leave to contest the suit.

6. This petition was opposed by the respondent. According to the counter affidavit filed by the respondent, it was specifically pleaded that the suit amount includes the principal, interest and other incidental charges. The respondent/plaintiff while disputing the payment of entire suit amount by the petitioner herein and also about the payment of Rs.4,50,000/- towards interest and principal has further alleged that he has issued a notice asking the petitioner herein to pay Rs.8,90,006/- by notice dated 09-01-2019. The suit was filed by calculating the interest up to 31-12-2017, thereby, the suit claim according to the respondent is correct and there is no necessity to grant leave to the petitioner for defending the suit.

7. The Court below having heard both parties was of the opinion that there is a triable issue in the suit. However, in view of the contentions of the petitioner/defendant, granted leave to defend the suit on condition of his depositing 50% of the suit claim.

8. The petitioner while filing the present revision, placed reliance on a Judgment between '*M/s. Uma Shanker Kamal Narain & Anr. vs. Md. Overseas Ltd.*' in Civil Appeal No.1344 of 2007 for the proposition that if there is a triable issue between the parties, leave can be granted without imposing any condition. In the above referred Judgment, the Hon'ble Apex Court referred another Judgment between '*Milkhiram (India) Private Limited and others vs. Chamanlal Bros*¹ and '*Mechelec Engineers vs. Basic Equipment Corporation*².

9. The learned counsel for the petitioner has submitted that in the light of the observation made by Hon'ble Apex Court in the above referred Judgments and in view of the specific finding of the trial Court that there is a triable issue between the petitioner and respondent. The Court below ought not to have imposed such a condition and could have granted permission to defend the suit.

¹ AIR 1965 SC 1698

² (1974) 4 SCC 687

10. The request of the petitioner herein was opposed by the respondent/plaintiff.

11. Heard both parties.

12. Now the point for consideration is :

Whether the trial Court committed any irregularity by imposing condition on the petitioner to deposit half of the suit claim, if so, whether the order with regard to deposit of half of suit claim by the petitioner is liable to be set aside?

13. As per the affidavit, counter affidavit, arguments advanced by parties to the petition, it appears that the respondent/plaintiff has filed the main suit for recovery of money of Rs.12,74,866/-. The petitioner who is shown as defendant opposed the claim on various grounds but did not dispute the original transaction where under he was liable to pay money to the respondent. Even as per the affidavit filed in support of the petition, and as per the grounds of revision, it is the case of petitioner that he has paid an entire suit amount. He has also claimed that during the course of time, he has paid Rs.4,50,000/- which includes interest and principle. The only ground raised by the petitioner is he did not obtain receipt out of acquaintance with the respondent/plaintiff. Therefore, it is for the petitioner to establish that he has discharged the suit claim or he has to prove that he paid Rs.4,50,000/- during the course of time. The other

contention raised by the petitioner is with regard to the discrepancy of the amount claimed by the respondent/plaintiff in the legal notice and the amount claimed in the suit. As per the admitted case of both parties, a legal notice was issued by the respondent/plaintiff demanding the petitioner/defendant to pay an amount of Rs.8,90,000/-. Admittedly, the suit is filed for Rs.12,74,866/-. However, as per the counter affidavit filed by the respondent and arguments advanced, it is very clear that as on the date of issuing the legal notice, certain sum was shown by adding the interest as on the date of notice. Whereas, at the time of filing the suit, the interest was calculated up to 31-12-2017. Therefore, some more amount towards interest could have been added by the respondent/plaintiff.

14. In the Judgment relied on by the petitioner itself, the Hon'ble Apex Court was pleased to observe that if the defendant is able to satisfy the Court that he has got a good defence to the claim on merits, the defendant is entitled to unconditional leave. If the defendant is able to raise a triable issue indicating that he has a fair, bona fide defence, he is entitled to unconditional leave. Whereas, 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. Even though in the present case, it is not the

claim of petitioner that it is a moonshine defence but still as per the averments made in the affidavit, the only dispute is with regard to payment of Rs.4,50,000/- without obtaining any receipt and the calculations arrived at by the respondent/plaintiff. It may be true that the respondent included legal notice charges and other incidental expenses before filing the suit but when the petitioner is not able to show that there is no illusory or sham transaction, he is not entitled to unconditional leave. Therefore, the Court below rightly imposed a condition.

15. According to the facts and circumstances of the case, the suit was filed in the year 2019 basing on the transaction that took place much prior to it. The alleged mortgage deed was executed during 2017, therefore, already more than six years lapsed from the date of mortgage. The petitioner is able to dodge the proceedings by filing the present application since the year 2019. Therefore, there is justification in the order passed by the Court below by imposing a condition. It is not the case of petitioner herein that he has cleared the entire amount and obtained acknowledgment. It is very easy for the petitioner to say that he has paid the amount which is not less than 8 Lakhs. In the absence of any authenticated proof of payment, it cannot be accepted that the petitioner has cleared the loan. Therefore, there

is a justification in the imposition of such condition, thereby, the revision is liable to be dismissed.

16. In the result, C.R.P. is dismissed but without costs.

Consequently, Miscellaneous applications if any, are closed.

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Sd/-MOHD. ISMAIL
ASSISTANT REGISTRAR

SECTION OFFICER

To

1. The I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad.
2. One CC to Sri N.R.Bhagavan, Advocate [OPUC]
3. One CC to Sri Baglekar Akash Kumar, Advocate [OPUC]
4. Two CD Copies

Kj.



HIGH COURT

DATED:20/03/2023



JUDGMENT

CRP.No.612 of 2021

DISMISSING THE CRP.

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4/4/23