



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 8th August, 2023**

+ **C.R.P. 40/2021 & CM APPL. 14383/2021**

BRAJ MOHAN GARG Petitioner

Through: **Mr. Pankaj Jain, Advocate**

versus

KRISHNA MARUTI LIMITED Respondent

Through: **Mr. Murari Tiwari, Mr. Rahul Kumar
and Ms. Vishakha Govil, Advocates**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant revision petition under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter "CPC") has been filed on behalf of the petitioner seeking the following reliefs:

"i) Set aside/quash the Order dated 20-2-2020 Passed by Sh. Shivaji Anand Ld A.D.J.-02(North) Rohini District Court, Delhi passed in Civil Suit No. 57806/2016 titled as Braj Mohan Garg Vs Krishna Maruti Limited thereby allowing the application for grant of leave to defend under order 37 Rule 3(5) read with Section 151 CPC.

ii) Summon the records of the trial court Civil Suit No. 57806/2016 titled as Braj Mohan Garg Vs Krishna Maruti



Limited pending in the court of Shivaji Anand Ld A.D.J.-02(North) Rohini District Court, Delhi.

iii) Any other or further relief/order which this Hon'ble Court may deem fit, under the facts and circumstances of the case may also be passed in favour of the appellants and against the defendant."

2. A brief background of the instant petition is that the petitioner had preferred a suit for recovery of Rs. 96,21,490/-, being the balance of professional fee, against the respondent under Order XXXVII of the CPC before the Additional District Judge-02, Rohini District Court, New Delhi (hereinafter "ADJ" or "Trial Court"). The learned Trial Court, while taking cognizance of the matter, issued notice to the defendant.

3. In the said suit, an application praying for leave to defend in the summary suit was filed on behalf of the respondent, i.e., defendant before the Trial Court. The petitioner filed his reply before the learned ADJ raising objections to the said application and subsequently, the arguments were heard from both the sides on the application.

4. Vide the impugned order dated 20th February 2020, the learned ADJ allowed the application of the respondent thereby directing the respondent to file its written statement within 30 days from the date of the order. The petitioner is aggrieved by the said order and is assailing the same before this Court by invoking Section 115 of the CPC.

5. The learned counsel appearing on behalf of the petitioner submitted



that the Trial Court erroneously allowed the application of the respondent granting it the leave to defend without appreciating the facts of the case as well as the record before it. It is submitted that the Trial Court failed to appreciate the various documents placed before it, including the plaint, application of the leave to defend, the reply to the application, the various demand letters placed before the Court, the cheques for part payment, TDS certificates etc.

6. It is submitted on behalf of the petitioner that the Trial Court did not appreciate that the suit instituted against the respondent is based on agreement by email and correspondence between the parties. The facts regarding period of service have also not been appreciated by the Trial Court.

7. The learned counsel submitted that the respondent failed to show any specific triable issue in its application, yet, Trial Court wrongly observed that the respondent raised triable issues which would require attention and intervention of the Court. It is submitted that the learned Trial Court did not consider that the respondent did not satisfy the requirement of substantial defence that is likely to succeed. It is submitted that on one hand, a plea was raised on behalf of the respondent that there is no privity of contract between the parties and on other hand, a plea was raised that the company had made entire payment to the petitioner, which is self-contradictory.

8. It is further submitted that the learned Trial Court held that the



objections raised by the respondent can be decided on merits after leading evidence and hence, erroneously allowed the application of the respondent.

9. It is further submitted that the impugned order has been passed without providing sufficient reasons and suffers from material illegality and is against the settled principles of law. Therefore, it prayed that the impugned order be set aside.

10. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant petition and submitted that there is no error or illegality in the order passed by the learned Trial Court.

11. The learned counsel for the respondent submitted that there were substantial issues pertaining to the facts of the case of the petitioner and the merits of the claims raised on his behalf which could not be decided merely on the basis of the summary suit preferred by the petitioner and hence, the leave to defend was sought on behalf of the respondent herein, which was rightly allowed by the learned Trial Court. It is submitted that there are issues pertaining to jurisdiction of the Trial Court which have been raised in defence by the defendant which need to be decided by the Trial Court before passing any judgment in the suit filed by the petitioner. It is submitted that there is no liability or debt of the respondent pertaining to the amount claimed by the petitioner before the Trial Court and before this Court and hence, no cause of action ever arose in favour of the petitioner.

12. It is further submitted that the order dated 20th February 2020 is a



reasoned order passed after duly appreciating the documents placed and averments made on behalf of the parties and hence, the impugned order requires no intervention or interference by this Court. It is submitted that the present petition may thus, be dismissed for being completely devoid of merit.

13. Heard the learned counsel for the parties and perused the record.

14. The suit preferred before the Court below by the petitioner has been filed under Order XXXVII of the CPC which provides for summary procedure. The object of such provision is to facilitate speedy disposal of matters of nature that are included under Rule 1(2) of the Order. The CPC and the procedure laid down thereunder are in its structure and form is extensive and exhaustive enough to include all remedies available to the citizens and the procedure thereto. These remedies and procedures are extensively dealt with in the comprehensive Code. However, Order XXXVII facilitates a summary procedure saving an aggrieved party from the wide and extensive implications of the Code of Civil Procedure.

15. The procedure for institution of a summary suit is laid down under Rule 2 of Order XXXVII of the CPC which lays down as reproduced under:

“2. Institution of summary suits.—

(1) A suit, to which this Order applies, may if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,—



(a) a specific averment to the effect that the suit is filed under this Order;

(b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and

(c) the following inscription, immediately below the number of the suit in the title of the suit, namely :—

“(Under Order XXXVII of the Code of Civil Procedure, 1908).”

(2) The summons of the suit shall be in Form No. 4 in Appendix B or in such other Form as may, from time to time, be prescribed.

(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.”

16. The relevant provision to be appreciated for the adjudication of the instant petition is sub-rule 3 of Rule 2, reproduced above, which states that the defendant, against whom a summary suit is preferred, shall not defend his case without the leave of the Court by way of entering appearance. Such leave does not come as a matter of right under the summary procedure provided under the CPC.

17. Rule 3 of Order XXXVII of the CPC further provides for the



procedure for the defendant to enter appearance and reads as under:

“3. Procedure for the appearance of defendant—

(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or



upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6) At the hearing of such summons for judgment,—

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.”

18. The extensive provision stipulating for the procedure to be followed by the defendant in a summary suit is elaborate and comprehensive so as to ensure that the spirit and intent of summary procedure is not defeated by



way of redundant prolongation of the matter by either party. As per the provision reproduced above, a defendant, upon entering appearance may apply for the leave to defend, which may be granted to him by the Court unconditionally or upon the terms which may appear to be just to the Court. The provision clearly states that the leave to defend *shall* not be refused *unless* the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence or if such defence is frivolous or vexatious in the opinion of the Court.

19. The bare language of the provision reflects the intent of the legislature to allow the defendant in a summary suit to defend his case upon obtaining the leave of the Court and to that extent his defence may be permitted to be placed before the Court. At this stage, the Court need not delve into the appreciation of evidence and deeper consideration of the facts of the case to adjudge whether the defendant will ultimately succeed in the suit preferred against him. The leave to defend comes as an opportunity if the Court is satisfied that there are triable contentions raised on behalf of the defendant. The decisive test, at the stage of the grant of leave to defend, is whether the defence raised by the defendant is frivolous or sham, or whether it raises a real and substantial issue inviting consideration by the Court.

20. Therefore, it is evident that in a summary suit, the rule is grant of leave to defend and its refusal is exception. The Hon'ble Supreme Court to this effect in the judgment passed in ***B.L. Kashyap & Sons Ltd. v. JMS Steels & Power Corpn., (2022) 3 SCC 294***, has expressed its view that the



grant of leave to defend is the ordinary rule and denial of such leave is an exception. The relevant portion of the judgment is reproduced hereunder:

“33. It is at once clear that even though in IDBI Trusteeship [IDBI Trusteeship Services Ltd. v. Hubtown Ltd., (2017) 1 SCC 568 : (2017) 1 SCC (Civ) 386] , this Court has observed that the principles stated in para 8 of Mechelec Engineers case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687] shall stand superseded in the wake of amendment of Rule 3 of Order 37 but, on the core theme, the principles remain the same that grant of leave to defend (with or without conditions) is the ordinary rule; and denial of leave to defend is an exception. Putting it in other words, generally, the prayer for leave to defend is to be denied in such cases where the defendant has practically no defence and is unable to give out even a semblance of triable issues before the court.

33.1. As noticed, if the defendant satisfies the Court that he has substantial defence i.e., a defence which is likely to succeed, he is entitled to unconditional leave to defend. In the second eventuality, where the defendant raises triable issues indicating a fair or bona fide or reasonable defence, albeit not a positively good defence, he would be ordinarily entitled to unconditional leave to defend. In the third eventuality, where the defendant raises triable issues, but it remains doubtful if the defendant is raising the same in good faith or about genuineness of the issues, the trial court is expected to balance the requirements of expeditious disposal of commercial causes on one hand and of not shutting out triable issues by unduly severe orders on the other. Therefore, the trial court may impose conditions both as to time or mode of trial as well as payment into the court or furnishing security. In the fourth eventuality, where the proposed defence appears to be plausible but improbable, heightened conditions may be imposed as to the time or mode of



trial as also of payment into the court or furnishing security or both, which may extend to the entire principal sum together with just and requisite interest.

33.2. Thus, it could be seen that in the case of substantial defence, the defendant is entitled to unconditional leave; and even in the case of a triable issue on a fair and reasonable defence, the defendant is ordinarily entitled to unconditional leave to defend. In case of doubts about the intent of the defendant or genuineness of the triable issues as also the probability of defence, the leave could yet be granted but while imposing conditions as to the time or mode of trial or payment or furnishing security. Thus, even in such cases of doubts or reservations, denial of leave to defend is not the rule; but appropriate conditions may be imposed while granting the leave. It is only in the case where the defendant is found to be having no substantial defence and/or raising no genuine triable issues coupled with the court's view that the defence is frivolous or vexatious that the leave to defend is to be refused and the plaintiff is entitled to judgment forthwith. Of course, in the case where any part of the amount claimed by the plaintiff is admitted by the defendant, leave to defend is not to be granted unless the amount so admitted is deposited by the defendant in the court.

33.3. Therefore, while dealing with an application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the rule or that the leave to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues, with the defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave. It gets perforce reiterated that even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated above could be imposed



while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the defendant fails to show any genuine triable issue and the court finds the defence to be frivolous or vexatious.

21. In the background of the intent and objective of the summary procedure provided under the CPC, the law *qua* the grant of leave to defend has been settled. It has been established that granting the leave to defend as an exception in cases of meritorious defences is not the correct approach that should be taken by the suit courts. The Hon'ble Supreme Court laid out four eventualities/circumstances in which the defendant in a suit may seek the leave to defend. A defendant would be entitled to an unconditional leave to defend in cases where, either he is able to satisfy that he has a substantial defence, or he is able to show that there are triable issues being raised while also indicating a fair or *bona fide* or reasonable defence, even if it is *prima facie* not a positive defence. It is further stated that even in cases where there are triable issues but there is anticipation regarding the genuineness of the issues, the trial court may grant the leave to defence subjecting the defendant to certain conditions as it may deem fit and necessary, considering the requirement of expeditious disposal.

22. Therefore, it is apparent that the essential, though not principal, consideration before the trial court before granting the leave to defend is the intent of including the provision for summary procedure which facilitates speedy, effective and expeditious disposal of cases. Hence, while considering the case of the petitioner in the instant case, the settled



principles of law shall be observed accordingly.

23. At this instance, this Court finds it apposite to revisit the scope of intervention under revisional jurisdiction, which has been settled by the provision itself as well as by interpretation made by the Hon'ble Supreme Court.

24. In the landmark judgment passed in ***D.L.F. Housing & Construction Co. (P) Ltd. vs. Sarup Singh, (1969) 3 SCC 807***, the Hon'ble Supreme Court while discussing the scope of revision under Section 115 of the CPC held as under:

“5. The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words “illegally” and “with material irregularity” as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting



the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal.”

25. The Hon’ble Supreme Court explicitly settled that the Court exercising revisional powers shall not enter into the questions of facts or evidence or any errors thereto but shall limit itself to the question of errors of exercise of jurisdiction. Moreover, the bare language of the provision itself stipulates the three grounds based on which a revisional court shall interfere. This includes the set of matters where the Subordinate Court appears to have;

(a) exercised a jurisdiction not vested in it by law, or

(b) has failed to exercise a jurisdiction so vested, or

(c) has acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

26. The Hon’ble Supreme Court has time and again reiterated that it is not



open for a High Court to delve into the questions of facts and merits while adjudicating upon an order under revision. The position has been reiterated in the judgment passed in ***Ambadas Khanduji Shinde vs. Ashok Sadashiv Mamurkar***, (2017) 14 SCC 132, wherein the Hon'ble Supreme Court held as under:

“14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual findings while exercising jurisdiction under Section 115 of the Civil Procedure Code. It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. In the facts on hand, the courts below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial court.”

27. Upon a bare perusal of the judgments reproduced above, it is evident that the scope of intervention by this Court under Section 115 of the CPC is fairly narrow and limited. The provision stipulates the three grounds where a High Court may interfere by calling for the record of any case decided by a subordinate Court, where an appeal against such a decision does not lie and, as reproduced above, the Hon'ble Supreme Court has also reiterated the view that the scope of revisional powers bars an interference on the basis of errors of facts or law. It is only where there is an irregular exercise or non-exercise of jurisdiction or the illegal assumption of jurisdiction by a court



that the revisional court may intervene. Hence, it is apparent that this Court shall also limit itself to the consideration whether the order passed by the learned Trial Court was passed in proper exercise of jurisdiction and shall not re-appreciate evidence or sit in appeal over the order of the Trial Court.

28. The learned Trial Court while passing the impugned order dated 20th February 2019, made the following observations:

“As the suit of the plaintiff is based on self-made invoices and balance of recovery made for professional services for the defendant, cannot be outrightly decided without ascertaining various facts relating to the period when the plaintiff provided services, balance of professional fees and veracity of various documents.

*The judgment relied by the plaintiff viz; **M/s Indian Iron & Steel Company V. M/s Nada Brothers, IA No.4430/95 in CS (OS) No.2335/94 decided on 22.7.2004 and Anil Maheshwari v. Lamda Eastern Telecommunication Ltd; IA No. 3888/2014 in CS (OS) 669/12 dated 29.10.2015 and Ms/ S & S Technocraft Pvt Ltd. v. Rath Steel Ltd. RFA (OS) 65/2015, dated 17.8.2015, are not much help to the plaintiff. Hence, it is upheld that the defendant has raised triable issues which entitle him for grant of leave to defend.***

Therefore, the application for leave to defend is allowed. Defendant is directed to file W.S within 30 days with advance copy to the plaintiff who shall file replication to the same.”

29. The learned Trial Court while considering the application of the respondent was of the view that the issues raised on behalf of the respondent were triable and could not be dismissed at the outset, without considering its



defence. It was observed that the claims of the plaintiff, petitioner herein, were raised while placing reliance upon the self-made invoices and balance of recovery made for the professional services exchanged between the parties. It is clear that the Trial Court was of the view that the claims of the plaintiff and the defence of the defendant presented disputed facts which required the scrutiny of the Court and a due and proper consideration before making reaching to a conclusion and passing a judgment on the suit preferred by the petitioner. At that stage, not going into the defence raised by the defendant would neither have served the interest of justice nor would have affirmed the principles of the law pertaining to summary suits and grant of leave to defend which already stands settled.

30. In the matter at hand, the learned ADJ passed the impugned order only after considering the material placed before him, the submissions and objections raised on behalf of the plaintiff in his suit and in the application made on behalf of the defendant as well as the intervening circumstances pertaining to the issues raised on behalf of the defendant by way of its application seeking leave to defend. There is nothing in the contents of the impugned order that suggests that the while passing the order, the learned ADJ has exercised jurisdiction not vested in him by law or that he failed to exercise jurisdiction that is vested in him. Moreover, the petitioner has also failed to show that the learned ADJ, while passing the impugned order has exercised his jurisdiction illegally, or that the impugned order suffers from any infirmity or material irregularity.



31. The learned ADJ also considered the law that stands settled and granted the leave to defend in the favour of respondent since there were triable issues and a substantial defence raised on behalf of the respondent. The learned Trial Court rightly held that a substantial defence had been raised on behalf of the respondent which required consideration by way of conducting a trial. The issues pertaining to the jurisdiction, disputed facts, merits in the case of the petitioner as well as the invoices etc. upon which the petitioner had relied are certainly triable issues.

32. Therefore, considering the entirety of the matter, the aforesaid facts, circumstances, submissions made on behalf of the parties during the course of arguments and in their pleadings, as well as the contents of the impugned order dated 20th February 2020, this Court is not inclined to exercise its revisional jurisdiction and set aside the impugned order which has been passed after due consideration and in proper exercise of the powers.

33. In view of instant petition is dismissed for being devoid of merit along with pending applications, if any.

34. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 8, 2023
gs/ms

Click here to check corrigendum, if any