
(2012) 03 DEL CK 0179

In the Delhi High Court

Case No : Regular First Appeal (OS) No. 76 of 2007

Bank of India

APPELLANT

Vs

M/s. Nirlon Ltd. and Others

RESPONDENT

Date of Decision : 06-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 3(5), Order 37 Rule 3(7), Order 37 Rule 4

Limitation Act, 1963 — Section 5

Citation : (2012) 03 DEL CK 0179

Hon'ble Judges : Pratibha Rani, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Manjula Gandhi, for the Appellant; Anshu Mahajan, for the Respondent

Judgement

Pradeep Nandrajog, J.—Learned counsel for the parties do not dispute that an application under Order 37 Rule 4 of the CPC requires not only sufficient cause to be shown for not defending a summary suit but also requires it to be shown that the applicant has a prima facie triable issue, requiring leave to defend to be granted.

2. Respondent No. 1 Nirlon Ltd. had filed a suit under Order 37 of the Code pleading that Hilton Rubber Ltd. (defendant No. 3) had desired to purchase goods from it and had opened a letter of credit through Bank of India in its favor. That Nirlon Ltd. dispatched the goods and drew up a bill of exchange and along therewith enclosed all documents stipulated in the letter of credit and submitted the same to its banker i.e. Union Bank of India which sent the documents to the issuing bank i.e. Bank of India and that rather to remit the money under the letter of credit, Bank of India returned the documents and the bill of exchange beyond seven days of receipt thereof and by that time the letter of credit had expired. It was pleaded that Hilton Rubber Ltd. took delivery of the goods and for which no payment was received.

3. In what manner the goods were received by Hilton Rubber, has not been pleaded in the plaint, but as is to be found from the impugned order, case argued by Nirlon was that while returning the bill of exchange and the documents, the appellant i.e. Union Bank of India, handed over the Motor Transport Receipt to Hilton Rubber and thus, on the basis thereof, Hilton Rubber took delivery of the goods from the transporter through whom the goods were to be transported.

4. After the suit was filed and summons were issued in the prescribed form, the appellant entered appearance and before summons for judgment could be issued, Nirlon sought to amend the plaint. The amendment was allowed vide order dated January 21, 2004 and summons for judgment were issued. Various defaults were committed by Nirlon and it took two years for summons for judgment to be served upon Bank of India, and no application seeking leave to defend being filed, suit was decreed against the Bank on September 07, 2006. Thereafter, applications were filed by Bank of India under Order 37 Rule 4 of the CPC to recall the ex-parte decree dated September 07, 2006; under Order 37 Rule 3(5) and (7) seeking leave to defend and under Order 37 Rule 3(7) of the CPC read with Section 5 of the Limitation Act seeking delay to be condoned in filing the application seeking leave to defend. The three applications were registered as I.A.Nos. 12237 to 12239/2006 and have been dismissed vide impugned order dated July 06, 2007 holding that as the issuing bank, when appellant received the Motor Transport Receipt along with the bill of exchange and other documents, it acted reckless in releasing the Motor Transport Receipt to Nirlon and thus facilitated Nirlon receiving the goods from the transporter. In other words, the learned Single Judge has found that no triable issue was pleaded and thus, the application under Order 37 Rule 4 has been dismissed, as also the other two applications.

5. Another reason given by the learned Single Judge is that there was no sufficient cause shown not to have filed the leave to defend application within 15 days of summons for judgment being received. The learned Single Judge has held that an officer of the Bank had received the summons for judgment and since the Bank had fought and defended commercial banking litigation, it was expected to know the procedures of the law.

6. The learned Single Judge has not taken note of the fact that the plaint was amended and a lot of time have lapsed since the Bank was served with the notice in the suit and when summons for judgment were issued and that it was pleaded by the Bank in the applications that Mr. Ashwani Mata, Advocate was engaged as the counsel and the Bank remained under an impression that the counsel was doing the needful, but unfortunately, due to some communication gap, needful could not be done.

7. The learned Single Judge has taken a very pedantic view of the matter and has ignored the fact that while returning the bill of exchange along with the documents received, the appellant had returned the Motor Transport Receipt to the collecting Bank i.e. the banker of Nirlon and to this extent we find a factual

error in the impugned judgment.

8. The plea raised by learned counsel for the respondent; of the appellant returning the bill of exchange beyond the validity period of the letter of credit, has not been discussed by the learned Single Judge, but we find that on the reasoning given, the learned Single Judge is incorrect in reaching the conclusion that I.A.No. 12237/2006 and I.A. No. 12239/2006 had to be dismissed.

9. Since we find that the learned Single Judge has not correctly applied himself to I.A.No. 12238/2006, we dispose of the appeal allowing I.A.No. 12237/2006 and I.A.No. 12239/2006 and set aside the impugned order dated July 6, 2007 insofar said applications have been dismissed and we allow the said two applications and as a consequence set aside the ex-parte decree dated September 07, 2006.

10. We restore I.A.No. 12238/2006 with a direction that the same be decided afresh, and while so doing, all ground on which leave to defend have been predicated would be taken note of.

11. Since the appellant is a public sector bank, we feel no useful purpose would be served in retaining the decretal amount deposited by the appellant as a condition of stay of the decree and thus, direct that the amount, together with the accrued interest, be returned to the appellant.

12. Registry would do the needful and list CS(OS) No. 1285/2001 along with I.A. 12238/2006 before the learned Single Judge for appropriate orders.

13. No costs.