
(2000) 04 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 5616 of 1999

B.R.S. Heart Institute and Research Centre	APPELLANT
Vs	
Bharat Medical Stores	RESPONDENT

Date of Decision : 25-04-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 1

Citation : (2002) 2 CivCC 538 : (2002) 3 RCR(Civil) 763

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.M. Jain, J.—This is a revision petition against the order dated 13.10.1999 passed by the trial Court granting leave to Defendants-Petitioners to defend the suit under Order 37 Code of Civil Procedure, subject to the condition that the Defendant shall furnish a bank guarantee in the sum of Rs. 2.50 lacs within 1 month and 15 days, failing which the leave to defend shall be deemed to have been declined.

2. The learned Counsel appearing for the Defendants-Petitioners has submitted that the present case is not covered under the provisions of Order 37 Code of Civil Procedure. He has submitted that the present suit for recovery filed by the Plaintiff-Respondent is neither a suit upon bill of exchange, hundies and promissory notes nor it is a suit in which the Plaintiff seeks to recover debt or liquidated demand in money payable by the Defendant, with or without interest, arising on a written contract or on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or on a guarantee where the claim against the principal is in respect of a debt or liquidated demand only. He has submitted that in fact Plaintiff-Respondent had filed the suit for recovery of Rs. 8,89,904.48 for non payment of the goods supplied by the Plaintiff to the Defendants and such the suit is not covered under the provisions of Order 37 Code of Civil Procedure.

3. After hearing both sides and perusing the record, I find force in this submission of the learned Counsel for the Defendants-Petitioners. A perusal of the plaint would show that the Plaintiff had filed a suit for recovery of Rs. 8,89,904.48 against the Defendants alleging therein that the Defendant institute used to take the surgical items/medicines etc. from the Plaintiff firm on the order Slips issued by the officials of Defendant institute and delivered on challan on credit basis and the bills were issued. It was further alleged that the Plaintiff firm used to deliver the goods to the Defendants as per their demand slips issued and that it was agreed between the parties that the payment of the said items would be made within a week of the delivery. After perusing the allegations made in the plaint, prima facie, it could not be said that the present case is covered under Order 37 Code of Civil Procedure. Neither it is a case based upon bills of exchange, promissory notes and hundies nor the Plaintiff is seeking to recover the amount arising on a written contract or enactment where the amount sought to be recovered is a fixed amount of money or in the nature of a debt other than penalty or on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand. In fact, it is a simple suit for recovery. That being so, the order dated 13.10.1999 passed by the trial Court treating the present suit as a suit under Order 37 Rule 1 CPC has to be set aside.

4. For the reasons recorded above, the present revision petition is allowed. The order dated 13.10.1999 passed by the trial Court is set aside and it is directed that the present suit shall be treated as an ordinary suit for recovery and not a suit under Order 37 Rule 1 Code of Civil Procedure.

In view of the peculiar facts and circumstances of the case it is directed that the learned trial Court shall expedite the disposal of the case and preferably within one year.