

(1987) 03 P&H CK 0128

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 1777 of 1986 and C.M. No's. 153 and 154-CII of 1987

Electronics Components (India) and Others

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 10-03-1987

Acts Referred:

Citation : (1987) 03 P&H CK 0128

Hon'ble Judges : G.C. Mital, J

Bench : Single Bench

Advocate : D.V. Gupta, for the Appellant; J.C. Verma, for the Respondent

Judgement

Gokal Chand Mital, J.—Indian Bank filed a suit on 25th August, 1984 for recovery of Rs. 5,79,039 14 against M/S Electronics Components (India) situate in Mohali near Chandigarh and its partners under Order 37 of the CPC (for short "the Code"). The Defendants filed an application for leave to defend the suit which was contested by the Bank, The trial Court by order dated 31st May, 1986 allowed the Defendants to defend the suit on furnishing security of Rs. 6 lacs within 10 days of the order, failing which the case was to come upon 10.5.86 for further proceedings. This is revision by the Defendants against the direction to furnish security of 6 lacs.

2. The learned Counsel for the Defendants has argued that once the defences raised in the application filed by it show that triable issues arise, which matter was accepted by the Court below, in view of Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation, , the condition of furnishing security could not be imposed and unconditional leave to defend had to be granted. The argument on the face of it has obvious merit but Shri J. C. Verma, Advocate, appearing for the bank has argued that there was no triable issue and the defence is vexatious, illusory, and sham, and it was entitled to a judgment for the amount claimed.

3. After considering the matter I am of the view that the Defendants have not raised fair or bonafide or reasonable defences, yet mercy is shown to the Defendants to try to prove the defences subject to the condition that they give security of Rs. 6 lacs within one month from today.

4. The trial Court was of the opinion that the resolution of the Board of Directors authorising the Zonal Manager to institute the suit has not been placed on the file. The file of the case was sent for and the resolution was brought to my notice by which the Assistant General Manager was authorised to file the suit above the value of Rs. 5 lacs, and the person who filed the suit on behalf of the bank was Assistant General Manager. Therefore, it could not be prime facie held that the suit was instituted by unauthorised person.

5. The remaining pleas raised are vague and are not founded on any definite facts. For plea of limitation no facts have been mentioned. The bank has produced that last document signed by the Defendants which shows that the suit is filed within three years of the execution of the document As regards wrong charging of interest, it is a matter of contract and accounting- In the application for leave to defend, nothing has been mentioned about the rate of interest. As regards territorial jurisdiction, the documents were signed in Chandigarh and the amount was recovered at Chandigarh. Accordingly, I am of the opinion that at the best the Defendants case can fall in proposition (e) laid down in M/S Mechalec Engineer's case (supra) and that is why, I have imposed the condition of furnishing of security of Rs. 6 lacs for defending the suit. In case security is not furnished within one month from today, it will be deemed that the leave to defend was not granted and the trial Court will proceed to decide the matter in accordance with the provisions of Order 37 of the Code.

6. The revisions stands disposed of accordingly with no order as to costs.