

(1998) 02 P&H CK 0133
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3609 of 1997

I.J. Transport Company and Others

APPELLANT

Vs

Ganga Auto Agency

RESPONDENT

Date of Decision : 27-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1999) 1 CivCC 218 : (1998) 119 PLR 40 : (1998) 2 RCR(Civil) 88

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : C.B. Goel, R.C. Chauhan and Rajesh Goel, for the Appellant; N.S. Gill, for the Respondent

Judgement

Sat Pal, J.—In this case, the respondent-plaintiff filed a suit for recovery of Rs. 16,50,000/- on the basis of three cheques bearing Nos.03295551 dated 28.7.1995 for Rs. 5 lacs; No. 03295552 dated 2.8.1995 for Rs. 5 lacs and No. 03295553 dated 10.8.1995 for Rs. 5,96,332/-, issued by the petitioner-defendants in favour of the plaintiff, under Order 37, CPC alongwith interest, future and pendente lite and costs. " The said suit was decreed by the Civil Judge, Senior Division, Jagadhri vide judgment dated 21.12.1996. The learned Civil Judge observed that the defence which the defendants wanted to raise was illusory, sham and frivolous and they only wanted to prolong the case as it will take a number of years to decide the case if the defendants were allowed to file written statement and after framing of issues the evidence was allowed to be adduced. The present petition has been filed against the said judgment dated 21.12.1996 by which the leave to defend has been declined to the petitioner-defendants.

2. Mr. Goel learned counsel appearing on behalf of the petitioner-defendants submitted that Order 37 of CPC was not applicable to the present case as the present case was based on cheques and not on bills of exchange, Hundis or promissory notes or on written contract as envisaged in Order 37 CPC. He further

submitted that the petitioners had raised a plausible defence in their application seeking leave to defend the suit. He submitted that the cheque book containing the cheques in question was taken away by the plaintiff fraudulently and the signatures on the cheques were fabricated. He, therefore, contended that the learned trial Court should have given leave to the defendants. He further submitted that even if the defendants had no defence or the defence was illusory the Court may protect the plaintiff by only, allowing the defence to proceed if the amount was secured and the leave could be given to the defendant on such condition. In support of his submission, he placed reliance on a judgment of the Supreme Court in *Mechalec Engineers and Manufacturers and Ors. v. Basic Equipment Corporation* AIR 1997 S.C. 577.

3. Mr. Gill, learned counsel appearing on behalf of the respondent submitted that Order 37, CPC was applicable to the suits based on Bills of exchange and a cheque has been defined as Bill of exchange drawn on a specified Banker under the provisions of the Negotiable Instruments Act, 1881. He, therefore, contended that the Order 37, CPC was applicable to the facts of the present case.

4. The learned counsel further submitted that the petitioners-defendants in their application seeking leave to defend, had admitted that the defendants were having business transactions with the plaintiffs and some amount was payable by the defendants to the plaintiffs. He, therefore, contended that in view of the said facts, the learned trial Court was of the opinion that the grant of leave would merely enable the defendants to prolong the litigation by raising frivolous defences and accordingly declined the leave to the defendants.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and have perused the records. Admittedly the suit in the present case, is based on three cheques and the cheque is a Bill of exchange as defined in the Negotiable Instruments Act, 1881. Since the cheque is a bill of exchange, the provisions of Order 37, CPC shall apply to the facts of the present case. Accordingly, the contention of the learned counsel of the petitioner that Order 37 CPC was not applicable to the present case, is rejected.

6. From the reports, I find that defendant No. 1 (petitioner herein) in his application for leave to defend has admitted that they had been purchasing diesel from the plaintiff. It was, however, alleged that the amount due to the plaintiff from the defendants was negligible and the defendant No. 1 wanted the plaintiff to show the copy of the account to settle the account regarding the payment of dues of diesel but ; the plaintiff with a view to pressurise the defendants filed the present suit. It was further alleged that the plaintiff had forged these cheques by removing the cheque book of the defendant lying in their office. From the aforesaid facts, it is clear that the defendants were having business dealings with the plaintiff and even according to their own case, some amount was due to the plaintiff from the defendants. The allegation of the defendants that the plaintiff had forged the cheques for removing the cheque book is not free from doubt as admittedly no FIR was lodged by the defendants

for the loss of the cheque book. The case of the petitioners at best falls within Clause (e) of the principles applicable to cases covered by Order 37 CPC as enunciated in the case of Machalec Engineers & Manufacturers (supra). The said Clause (e) reads as under:

"(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the Court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence."

7. In view of the above discussion, though the observation of the learned trial Court that the defence raised by the defendants is illusory and frivolous is correct, yet in view of the law laid down by the Supreme Court in the case of Mechalec Engineers & Manufacturers (supra). I am of the opinion that the petitioners should be given leave to defend the case on such conditions so as to protect the interest of the plaintiff. Accordingly, the petition is allowed and the impugned judgment dated 21.12.1996 passed by the learned trial Court is set aside and the petitioners are granted leave to defend the suit subject to the condition that they deposit 50% of the suit amount in the learned trial Court and furnish security for the remaining amount to the satisfaction of the learned trial court within four weeks from today. The learned trial Court is directed to keep the said 50% amount, if deposited by the petitioner, in a nationalised bank in the shape of fixed deposit.

8. With this order, the petition stands disposed of.