

(1957) 04 AP CK 0017

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1148 of 1056

Jaldu Ananta Raghurama Arya

APPELLANT

Vs

Jaldu Manikyala Rao

RESPONDENT

Date of Decision : 08-04-1957

Acts Referred:

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

Citation : (1957) 04 AP CK 0017

Hon'ble Judges : Chandra Reddy, J

Bench : Single Bench

Advocate : P. Somasundaram and P. Suryanarayana, for the Appellant; C. Apparao, for the Respondent

Judgement

Chandra Reddy, J.—This petition is to revise the order of the Subordinate Judge, Masulipatam, granting leave to the Defendant under Order 37 Rule 3 CPC on condition of the Petitioner (Defendant) furnishing security for the sum claimed on the promissory note. The suit was filed against the Petitioner for recovering a sum of Rs-12,188-9-6 due on a promissory note executed by the Defendant on 20-6-1955.

The defence, to the suit was that there is no cash consideration for the document, but it came to be "executed under certain circumstances set out in the affidavit in support of the petition for leave to defend and also that the promissory notes were payable on the happening of certain events, namely, on the daughter of the Plaintiff becoming major and on another minor becoming a major. In opposing this petition the Plaintiff filed a counter-affidavit in which it was stated that this promissory note -was executed in renewal of an earlier one dated 19-6-1954 for cash borrowed and that the Defendant executed the suit promissory note when the Plaintiff was about to file a suit on the foot of a prior promissory note, The trial court granted leave on the condition set out above.

2. In this revision petition, that order is assailed by Mr. Suryanarayana. It is stated that the Judge was not-right in observing that the defence was nc4riat the

document was not supported by consideration, whereas his plea was that the was want of consideration. This contentious has to be rejected. Assuming that sphere an any substance in the defence that no wear was paid for the promissory note, it down not follow that there is no consideration fortify document. Even on his own showing, le promissory note was supported fully by consideration

3. It was next urged that when once there is a triable issue the trial court has no option but to grant unconditional leave. Support for this submission is sought in the judgment of a Division Bench of the Madras High Court, in K.R. Kesavan Vs. The South Indian Bank Ltd., The passage on which reliance is placed by the counsel for the Petitioner is contained at page 257 (of ILR Mad): (at P. 229 of AIR). After referring to the judgment of Madhavannair, Chief Justice and Krishnaswamy Ayyan-gur J. in H.M. Ebrahim Sait Vs. The South India Industrials Limited, , Justice Satyanarayana Rao . who delivered the opinion of the Bench remarked:

The learned Judges considered the matter and the decisions on the points, including the decision in Jacobs v. Booth's Distillery Company, (1901) 85 LT 262 and held 1 that, the decision of Gentle, J was correct and that the Defendant was not entitled to an unconditional leave to defend. At page 41 (of ILR Mad): (at P. 964 of AIR) of the report, however, there are certain observations of the Honble the Officiating Chief Justice which go to indicate that, in order to entitle a Defendant to unconditional leave, he should satisfy the court not only that there was a triable issue but also that his defence was bona fide.

The decision in G. Sundaram Chettiar Vs. P.A. Valli Ammal, , was also doubted. The decision in G. Sundaram Chettiar Vs. P.A. Valli Ammal, did not lay down the broad proposition that the defence should not only raise a triable or real issue or a plausible issue, but that it should also be a bona fide one. If the issue raised is a real one, no further question of the consideration of the bona fide nature of defence arises.

4. The passage is only an authority for .the proposition that . in deciding whether leave should be granted or not, the only test is whether there is a real issue and not that in addition to the defence raising a triable issue it should be a bona fide one posh. This judgment was followed by another,-Bench of. the Madras High" "Court in" A.M.K.M.K. Muthukaruppan Chettiar Vs. S.S. Habib Mohamed Rowther, In the latter case, the Learned Judges on basis of LB (1950) Mad 251 : K.R. Kesavan Vs. The South Indian Bank Ltd., stated that if the Court was satisfied that-the alleged defence was a sham and a bogus1 one, death defend should be refused express: my respect full accord with the doctrine of these two cases The principle deduced is that in order to obtain leave to defend, the defence raised should appear to be a sham or a bogus one, i.e., it should be a real one. It is surely competent for the Court to direct the Defendant to furnish security for the amount claimed as a condition for granting leave.

In this case, the order of the learned Judge shows that he did not consider that

there was a real defence to the suit. Therefore, ho was right in granting conditional leave. Under Order 37 Rule 3 CPC it is not necessary that leave should be granted unconditionally in every case .where the defence discloses a triable issue. The defence must be a real one.

5. In the result, the petition is, therefore, dismissed with costs.