

(1986) 10 GUJ CK 0001
In the Gujarat High Court

K.K. Arora and Sons

APPELLANT

Vs

Meghraj and Sons

RESPONDENT

Date of Decision : 08-10-1986

Acts Referred:

Civil Procedure Code Amendment Act, 1976 — Section 115
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1987) 1 GLR 427

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Judgement

R.A. Mehta, J.—This revision application by the original defendants Nos. 1 and 3 is directed against the order of conditional leave to defend on petitioners-defendants depositing jointly and severally a sum of Rs. 3,500/-. The summary suit was for recovery of Rs. 11,400/- for the goods said to have been sold and delivered to the defendants.

2. The defendants submitted that the allegations of the plaintiff were denied and there were triable issues and, therefore, unconditional leave ought to have been granted. It is submitted that prior to filing of the application for leave to defend, inspection of account books, bill books, vouchers and delivery slips etc. was sought, but the plaintiff had given simple copies of bills and no accounts were shown and this created some doubt about the genuineness of the accounts. It is also contended that the plaintiff had produced delivery slip Ex. 17/2 dated 26-6-1979 for which payment was made and no amount was due on that delivery slip. The description of goods, Mill, bale number, pieces and meters were as shown in the suit bill No. 1512 dated 26-6-1979 and these facts created a suspicion about the alleged transaction and, thus, it was submitted that the persons who had signed the delivery memo had no connection with the petitioners defendants. Therefore, it was ultimately contended that the alleged accounts and delivery Slips were false and concocted by the plaintiff.

3. The learned trial Judge, after considering all these aspects, has thought it fit

to grant leave to defend to the petitioners. However, a condition has been imposed on the defendants to deposit a sum of Rs. 3,500/- in the Court as against the claim of Rs. 11,400/-.

4. The summary suits may be classified into three categories:

- (i) where no leave to defend can be granted;
- (ii) where unconditional leave to defend has to be granted; and
- (iii) where conditional leave has to be granted.

In a clear case, where unconditional leave is to be granted, there may not be any difficulty. However, in the third category of cases where the defendant may have some defence, at the same time, there may be circumstances showing that the defence is not bona fide, the Court has a discretion to impose condition. Such discretion cannot ordinarily be subject of revision u/s 115 of the C.P.C. The trial Court has the jurisdiction to consider the question whether to grant or not to grant leave to defend or to grant conditional or unconditional leave to defend. The case where leave is refused would stand clearly on different footing than where leave is granted or conditional leave is granted. The Court has the jurisdiction having regard to the facts and circumstances of the case to impose the condition while granting leave to defend and that would be within its jurisdiction and even if there is some error, it cannot be said to be a jurisdictional error which is required to be corrected u/s 115 of the C.P.C.

5. Moreover, after the amendment of Section 115 of the C.P.C in 1976, there is a further restriction on the power of the High Court in entertaining revision applications on merely legalistic grounds. The power of the High Court is circumscribed by a further condition that there has to be a failure of justice or irreparable injury in addition to the jurisdictional and other basic errors contemplated under Clauses (a), (b) and (c) of Section 115 of the C.P. Code. Even after the condition of an error under Clause (a), (b) and (c) is satisfied, a further condition required by the proviso is to be satisfied that such an error has occasioned failure of justice or irreparable injury to the petitioner.

6. In the present case, the condition to deposit Rs. 3,500/- is not shown to be in any way difficult for compliance or causing undue hard-ship to the defendants.

7. Therefore, High Court would not be justified in interfering with such cases in revision especially when the proviso has now been enacted expressly directing that the High Court shall not interfere or reverse the order of the subordinate Courts unless there is failure of justice or irreparable injury.

8. In the result, this revision application is rejected with no order as to costs. However, the petitioners-defendants are granted time to deposit the amount of Rs. 3,500/- in the trial Court within four weeks from the date of receipt of writ by the trial Court. Rule discharged.