

(1983) 12 MAD CK 0020
In the Madras High Court
Case No : C.R.P. No. 768 of 1983

K.S. Meenakshi Ammal and Others	Vs	APPELLANT
M. Subbalakshmi Ammal		RESPONDENT

Date of Decision : 23-12-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 2, Order 37 Rule 3

Citation : AIR 1984 Mad 348 : (1984) 97 LW 230

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Advocate : T. Chengalvarayan, for Anand, Dasgupta and Sagar, for the Appellant; K. Chandramouti, for the Respondent

Judgement

1. This revision is directed against the order of the lower Court in so far as it is against the petitioners herein. The petitioners herein are the defendants in O. S. 5346 of 1981 on the file of the City Civil Court, Madras, which is a suit filed for recovery of Rs. 95200 with interest on the basis of a promissory note. Since the suit is based on a negotiable instrument, the said suit has been filed under O. 37, C. P. C. The defendants applied to the Court below in 1. A. 5633 of 1982 for leave to defend the said suit. In the application for leave to defend, they have raised various defences. After considering the defences taken in the application for leave to defend, the court below held that the plea put forward in the application for leave to defend cannot be true and. therefore, there is no triable issue. The court below, however, felt that the defendants could be given an opportunity to defend the suit, if they pay the entire amount claimed in the suit within one month from the date of the order. The trial court, therefore, ordered on 27-1-1983 that on the defendants depositing the entire

amount claimed in the suit within 27-2-1983, they will be granted

leave to defend. The defendants are not aggrieved against that portion of the order which granted them leave to defend, but they are aggrieved by

the condition imposed by the lower court. Their case is that the lower court cannot impose such a condition and that in any event, the condition

imposed is so onerous as to prevent the defendants from availing of the opportunity to defend the suit given by the court below.

2. Before me, the learned counsel for the petitioners submits, relying on the decision of the Supreme Court in *Mechelec Engineers and*

Manufacturers Vs. Basic Equipment Corporation, that once the court is inclined to grant leave to defend, the court may impose conditions as to

time or mode of trial, but not as to payment into court or furnishing security for any sum. It is no doubt true in that case the Supreme Court has

pointed out that if the defendant discloses such -facts as may be deemed sufficient to entitle him to defend, so as to lead to the inference that at the

trial of the action, he may be able to establish a defence to the plaintiff's claim, the plaintiff is not entitled to judgment and the defendant is entitled

to leave to defend and in such a case, the court may in its discretion impose conditions as to the time or mode of trial, but not as to payment into

court or furnishing security. The facts in this case are somewhat different and the said principle laid down by the Supreme Court cannot be

invoked. On the other hand, the facts in this case attract the other principle laid down in the same decision of the Supreme Court, which is as

follows (at P. 580) -

If the defendant has no defence or the defence is illusory or sham or practically moon-shine 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.

3. A perusal of the order of the lower court, which is the subject-matter of revision before this court clearly, shows that the court below has found

that the defendants have not raised any substantial defence or shown that any triable issue arises in the case and that the defence is practically

illusory. The lower court then proceeded to say that none-the-less it is inclined to

grant leave to defend to the defendants if they deposited the entire amount claimed in the suit. Thus, though the lower court felt that there is no triable issue for grant of leave to defend having regard to the amount involved, it thought that an opportunity should be given to the defendants to defend the suit, but that opportunity could be given only on condition that they deposit the entire amount claimed in the suit. The principle laid down by the Supreme Court is that the leave to defend can be given in such cases only if the plaintiff's interest is sufficiently protected by calling upon the defendants to pay the said amount into court or furnish security for the same. Therefore, the order of the lower court imposing a condition for granting leave to defend to the petitioner cannot be said to be without jurisdiction, as contended by the learned counsel for the petitioners. However, having regard to the fact that the suit claim is for a sum of Rs. 95000/- if the entire amount is directed to be paid as a condition precedent for grant of leave, the defendants may not be in a position to avail of the benefit given to them by the court below while granting leave to defend. It is no doubt true that such a direction has been given only to protect the interests of the plaintiff. But, non the less the court below having granted leave to defend, that right cannot be made illusory by imposing a condition which cannot be performed by the defendants. I am, therefore, of the view that in this case, the plaintiff's interests will be sufficiently safeguarded if the defendants are directed to deposit half the amount claimed in the suit instead of the full amount claimed in the plaint. The lower court's order is, therefore, modified as one granting leave to defend on the petitioners depositing half the amount claimed in the suit within two months from this date.

4. It is represented by the learned counsel for the petitioner that as a result of the interim order passed by this court, pending the civil revision petition, a sum of Rs. 10,000/- has already been deposited into the court to the credit of this suit. If that is a fact, the sum of Rs. 10,000/- will be taken credit and the defendants will be liable to pay only the balance. The civil revision petition is allowed in part. There will be no order as to costs.

5. Petition partly allowed.