
(2014) 06 AP CK 0039
In the Andhra Pradesh High Court
Case No : CRP No. 5269 of 2013

Mohammad Sadat Ali

APPELLANT

Vs

Syed Ather Ali

RESPONDENT

Date of Decision : 23-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 3, Order 37 Rule 4

Citation : (2014) 6 ALD 56

Hon'ble Judges : Ashutosh Mohunta, J

Bench : Single Bench

Advocate : Babuji Tenneti, Advocate for the Appellant; Ali Farooq, Advocate for the Respondent

Judgement

Ashutosh Mohunta, J.—This revision petition is filed aggrieved by the order dated 9.12.2013 passed in IA No. 587 of 2008 in OS No. 887 of 2008 wherein and whereby the learned VII Senior Civil Judge, City Civil Court, Hyderabad dismissed the application filed by the petitioner under Order XXXVII Rule 4 C.P.C. seeking leave to defend the suit. The petitioner is the defendant in the aforesaid suit filed by the respondent-plaintiff for recovery of money based on alleged documents said to have been executed by the petitioner. In the suit, the petitioner filed IA No. 587 of 2008 to grant leave to defend the suit stating that there are so many facts to be elicited before the Court with regard to the filing of the suit and also with regard to the documents filed by the respondent in the suit. The respondent filed counter contending that the petitioner received Rs. 2,00,000/- from his brother Syed Mazher Ali on 15.10.2002 under an agreement promising to repay the same within two or three years. It was agreed that the petitioner should pay Rs. 75,000/- towards damages if he commits default in payment of the amount. As the brother of the petitioner was leaving India, the petitioner executed a deed of undertaking dated 4.3.2005 acknowledging the loan amount and promising to repay the same to the respondent. The petitioner is also said to have issued two cheques for Rs. 2,75,000/- on 3.11.2005 to the respondent. It is the case of the respondent that in spite of repeated demands and legal notice dated 26.12.2005,

the petitioner did not repay the amount, but issued reply notice dated 6.1.2006. Hence, the respondent is entitled to recover Rs. 2,75,000/- along with interest from the petitioner. The respondent also initiated criminal proceedings against the petitioner and took back the original documents filed along with the plaint for filing the same in the criminal cases initiated by him. According to the respondent, since the petitioner did not mention as to what are the triable issues involved in the suit, he is not entitled for grant of leave to defend the suit.

2. During the course of enquiry, Exs. P1 to P6 were got marked on behalf of the petitioner and Exs. R1 to R11 were got marked on behalf of the respondent. The trial Court after hearing both sides and considering the material available on record dismissed the petition holding that the petitioner failed to establish that there is a triable issue in the suit and, therefore, he is not entitled for grant of leave to defend the suit by filing written statement. Hence the revision petition.

3. Learned Counsel for the petitioner contended that since the respondent has taken back the original documents, he cannot proceed further with the suit proceedings. In support of his contention, he placed reliance on a judgment of the Supreme Court in *Neebha Kapoor Vs. Jayantilal Khandwala and Others*, .

4. On the other hand, learned Counsel for the respondent supported the impugned order.

5. It is the case of the respondent that his brother gave Rs. 2,00,000/- to the petitioner under an agreement promising to repay the same with interest within two or three years, in default to pay an additional amount of Rs. 75,000/-, that when his brother was leaving India, the petitioner executed a deed of undertaking on 4.3.2005 in his favour agreeing to repay the loan amount to him. The petitioner is also said to have issued two cheques, but due to insufficient funds they were dishonored. The respondent issued legal notice dated 26.2.2005 to which the petitioner issued reply notice. It is the contention of the petitioner that since many facts have to be elicited before the Court with regard to the subject-matter of the suit and with regard to the documents filed by the respondent, he be granted leave to defend the suit.

6. As rightly observed by the trial Court, the petitioner except stating that many facts with regard to the subject-matter of the suit and with regard to the documents have to be elicited, did not specifically deny the averments made in the plaint. It is his case that since original documents filed along with the suit were taken back, the respondent cannot proceed further with the suit and in support of his case he relied on the judgment of the Supreme Court in *Neebha Kapoor's case (supra)*. There is no dispute with regard to the proposition of law laid down in the said case. But in the case on hand, the respondent took back the original documents for filing the same in the criminal cases instituted by him. Hence, the said decision is not applicable to the case on hand.

7. In *V.K. Enterprises Vs. Shiva Steels*, , upon which reliance has been placed by the respondent, it was held as under:

"Order XXXVII CPC has been included in the Code of Civil Procedure in order to allow a person, who has a clear and undisputed claim in respect of any monetary dues, to recover the dues quickly by a summary procedure instead of taking the long route of a regular suit. The Courts have consistently held that if the affidavit filed by the defendant discloses a triable issue that is at least plausible, leave should be granted, but when the defence raised appears to be moonshine and sham, unconditional leave to defend cannot be granted. What is required to be examined for grant of leave is whether the defence taken in the application under Order XXXVII Rule 3 CPC makes out a case, which if established, would be plausible defence in a regular suit. In matters relating to dishonour of cheques, the aforesaid principle becomes more relevant as the cheques are issued normally for liquidation of dues which are admitted."

8. Having regard to the aforesaid decision and in view of the fact that the petitioner failed to establish that there is a triable issue in the suit, leave to defend the suit was rightly rejected by the trial Court. Hence, I see no reason to interfere with the well considered order passed by the trial Court. The civil revision petition is accordingly dismissed. Miscellaneous petitions, if any, pending consideration shall stand closed. No order as to costs.