

(2016) 03 P&H CK 0344

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No.7838 of 2013 (O&M) and CR No.7882 of 2013 (O&M) and CR Nos.6915, 3278, 6111, 7488, 8668, 3140, 1834, 2553 and 1715 of 2014 (O&M) and CR Nos. 4005, 6316 of 2015 (O&M)

M/s Kumar Enterprises and another

APPELLANT

Vs

M/s Mahindra and Mahindra Limited

RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37
Negotiable Instruments Act, 1881 (NI) — Section 118, 20

Citation : (2016) 1 LAR 469 : (2016) 3 PLR 406

Hon'ble Judges : K. Kannan, J.

Bench : Single Bench

Advocate : Mr. Vijay Kumar Jindal, Senior Advocate, with Mr. Akshay Jindal, Advocate, Mr. Pradeep Kumar, Advocate for Mr. Rajesh K. Sharma, Advocate and Mr. Pankaj Jain, Advocate and Mr. Sumit Jain, Advocate, for the Appellant; Mr. Varun Luthra, Advocate, for the Re

Final Decision : Dismissed

Judgement

K.Kannan, J. (Oral) - All the revision petitions are connected and they are disposed of by a common judgment.

2. The counsel for the respondents points that the revision petitions Nos.7882 and 3278 of 2014 have become infructuous since decrees have already been passed in suits which are the subject of revisions. The Civil Revision Nos.7882 and 3278 of 2014 are disposed of as infructuous.

3. The other revision petitions are brought by the defendants aggrieved against the orders allowing for conditional defence to be given on furnishing security for a portion of the suit claim in summary suits instituted by the plaintiff.

4. The plaintiff is a public limited Company which manufactures tractors and the suit claims are for tractors and the cost of equipments supplied to the defendants. In some of the transactions, the supplies have been by the Punjab

Tractors Limited and the plaintiff has contended that the Punjab Tractors has been merged with the plaintiff-Company, namely, M/s Mahindra & Mahindra Limited by a scheme of amalgamation approved by this court and the Bombay High Court for taking over of all rights, interest and liability. The plaintiff's suits are rested on claims alleged to have been admitted by the defendants through confirmation letters of accounts and later in discharge of such liability, cheques were reported to have been given by the respective defendants. The suits have been filed within a period of 3 years from the respective dates when the cheques have been issued and it is the contention that since the execution of the cheques have all been admitted, the plaintiff is entitled to a summary judgment by resort to the provisions provided under Order 37 CPC.

5. The defendants have contended that the scheme of amalgamation is not admitted and that there had been no privity of contract by some of the defendants with the plaintiff-Company. It is also the contention that the liability is not admitted and the cheques that were drawn were intended to be security for the provisional claims made by the Company and the cheques did not actually represent the respective amounts for which the cheques were drawn. The actual liability could be reconciled only if the accounts were produced and the actual amounts are determined and this raises a triable issue for consideration that would entitle the respective defendants to be granted the leave to defend unconditionally. It is also their contention that the suit has not been properly filed by a person authorised to file the case and that further the original cheques have not been filed in court and consequently, the plaintiff cannot have judgments summarily in the manner sought.

6. The trial court considered the defendants' plea and has observed that it would be a matter of evidence of whether the suit filed by the plaintiff-Company was maintainable or not and whether the plaintiff could legally recover the amounts covered through the cheques from the defendants or not. The court observed that there was an admission of the defendants regarding the issuance of cheques in favour of the transferor of the Company in some of the cases and, therefore, the leave to defend was to be granted subject to the condition on furnishing security for half of cheque amounts.

7. The principal arguments were laid through Mr. Vijay Kumar Jindal, Senior Advocate and supported by other counsel appearing for the other revision petitioners as well. Senior counsel would refer me particularly the recent judgment of the Supreme Court in *State Bank of Hyderabad v. Rabo Bank*-2015(4) Civil Court Cases 696 (SC) that examined the parameters that the court would employ before taking a decision on whether leave to defend could be granted and if such leave could be granted, the circumstances when any condition could be imposed or otherwise. The Supreme Court was summarising in para 15 of the judgment that if the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence, the defendant was entitled to unconditional leave. Even if such a positive case was not forthcoming, and the

defence was such that it should lead to an inference that at the trial it should be possible to establish such a defence, even then the leave to defend could be granted with no liability for payment in court on furnishing security. The direction could be only with reference to time and mode of trial. If there was no defence or it is illusory, the court may either deny the leave to defend or show mercy on defendant by enabling him to try to prove the defence by imposing appropriate condition or secure the claim made by the plaintiff. The counsel appearing on behalf of all the petitioners have raised an objection in unison that when the court was observing that there was a defence which was still required to be considered at the trial, it should have applied the norms laid down by the Supreme Court to hold that the defence ought to have been permitted without any direction for security.

8. The learned counsel for the plaintiff-respondent contend that even the observations made by the trial court that there were triable issues were not correct and if it had allowed for certain conditions to be imposed, it was in a situation where the defence was literally illusory and refers to a judgment of the Supreme Court in *V.K. Enterprises and another v. Shiva Steels*-(2010) 9 SCC 256 which according to him brings out facts similar to the facts arising in this case. In the said case, the court was considering the defence of the defendants denying liability and taking up a plea that the cheques which were issued were only for security for some financial liability which had still not been ascertained, there had been interpolations and that the claims were barred by limitation. The court was holding, after setting out defences, that the plea that there was interpolation in the cheques was without substance and the ledger accounts relating to the dues demonstrated that the dues had been settled and when the issuance of the cheques themselves had not been disputed but case had been only that the same had been issued only on account of security and not for presentation and that it had been misused for the purpose of dishonest means, they required no scope for grant of leave. According to the counsel there should have been no leave granted but if it was granted in situation explained by the Supreme Court in *State Bank of Hyderabad*'s case (*supra*), it was literally allowing for mercy to the defendants to enable to try to prove the defence.

9. Of the several contentions raised, it must be remembered that the suit by a public Company could invariably be only through a human agency and the plaintiff has filed along with the plaint a deed of power of attorney authorising the person, who had verified and presented the plaints in court. The suits filed by a Company through a power of attorney could hardly be a matter of serious defence. Even a plea that the cheques are issued as security is not really a stout plea that admits of any serious consideration; at least *prima facie* so. Negotiable Instruments Act raises a presumption under Section 118 that a negotiable instrument is presumed to be fully supported by consideration. If a cheque is issued as security or with an authority given to the drawee that it could be filled up or used for certain claims which are later ascertained, it is still a valid instrument as per Section 20 of the Negotiable Instruments Act which states that

document which is inchoate with authority granted to the drawee to fill up the recitals, the document would become the full-fledged enforceable negotiable instrument, the moment the recitals were filled up by the drawee of the negotiable instrument. As regards the contention that there is no privity of contract with the plaintiff or some of the defendants and that the liability to Punjab Tractors cannot be enforced through the plaintiff, it is not a defence worthy of substance if the High Court has passed an order of amalgamation empowering the transferee Company to claim all rights of transferor Company. The non-production of the original cheques also would not assume significance in these cases, for, it has been explained that the dishonour of cheques resulted in actions for offences under Section 138 of the Negotiable Instruments Act before court of competent jurisdiction and that therefore certified copies of cheques have been filed along with the plaints.

10. The observations by the court that there is some defence which would require to be considered in my view is not even proper. On the other hand, there is no tenable defence at all. The respondents themselves are not required to prefer the revision against the adverse finding, if, all that they are interested is to support the order for other reasons which are legally permissible. It has been held by the Supreme Court in *Ravinder Kumar Sharma v. State of Assam and others*-AIR 1999 (SC) 3571 that Order 41, Rule 22 CPC gives right to the respondent but it was not obligatory to file cross objections. The respondent/defendant in an appeal, without filing cross objections, can attack an adverse finding upon which a decree in part has been passed against the respondent, for the purpose of sustaining the decree to the extent the lower court had dismissed the suit against the defendant/respondent. This court in *Ram Kishan v Bhagwan Sarup Nagar*-2006(1) PLR 754 has reproduced an observation of the Supreme Court in *Banarsi and others v. Ram Phal*-2003(2) RCR (Civil) 248 thus:-

"A party who has fully succeeded in the suit can and needs to neither prefer an appeal nor take any cross objection though certain finding may be against him. Appeal and cross-objection both are filed against decree and not against judgment and certainly not against any finding recorded in a judgment. This was well-settled position of law under the unamended Civil Procedure Code."

I hold that the case presents typically a situation of what is contemplated in *V.K. Enterprises* (supra) and if the court has not gone as far as to grant a decree summarily and reject the leave to defend, it has allowed for imposition of terms which will fit with in the fourth contingency which was contemplated by the Supreme Court and expressed in paragraph 15 in *State Bank of Hyderabad*'s case (supra). I modify the finding that there is any defence and hold that none of the defences in any of the cases of the defendants has any prima facie merit and if the defendants are given an opportunity to defend, it is by way of mercy and, therefore, the condition imposed was tenable.

11. At the time when notice was issued, this court has modified in one case in Civil Revision No.6316 of 2015 for a bank guarantee for Rs. 25 lakhs against a

claim of Rs. 1,61,67,420/-. In other cases, the counsel for the petitioners argued that if at all any condition could be imposed, the imposition of 50% of the amount to be offered as security should be modified as security for a lesser sum not exceeding 25%. I do not propose to modify any of the conditions, for, the claim in each one of the cases is substantial and if the leave to defend has been granted in a situation where the issuance of cheques are admitted by persons who cannot be said to be illiterate but who are in business and know the effect of issuance of cheques, the direction for furnishing security only upto 50% itself must be taken to be liberal exercise of discretion. I make no modification. As regards the petitioner in Civil Revision No.6316 of 2015, the petitioner is directed to furnish security for additional amount that will make up for security of 50% of the amount or at his option may furnish security for 50% and withdraw the bank guarantee already given. The court will not allow for withdrawal of the bank guarantee already offered before furnishing 50% security as directed by the court below.

12. The orders passed by the court below are modified to the above extent and all the civil revisions are dismissed. The petitioners will have time to furnish the security as directed within a period of 4 weeks from the date receipt of copy of this order. Needless to state that the observations relating to the nature of defence are for purpose of disposal of these civil revisions and they are entitled to prove whatever they contend for at the time of trial and the court will consider the same as per the documents and evidence adduced without in any way being prejudiced by the observations made by this court for disposal of these civil revisions.