(1988) 12 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 1808 of 1988

M/s Mohali Forge, Sasnagar (Mohali) APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 17-12-1988

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

Citation : (1988) 12 P&H CK 0021

Hon'ble Judges : Amrit Lal Bahri, J

Bench : Single Bench

Advocate : S.S. Nijjar, for the Appellant; S.C. Nagpal, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Bahri, J.—The Defendant Mohali Forge has preferred this revision petition against order dated June 6, 1988 passed by Sub Judge 1st Class, Kharar allowing leave to defend the suit on furnishngh security of Rs. 25,00,000/- The suit was filed by State Bank of India, Mohali Branch thereinafter called the bank) for the recovery of Rs. 22,93,976,54 P. on account of loan facilities allowed to the Defendant M/s Mohali Forge. Necessary Loan documents with respect to cash credit factory type and cash credit limit (bills) to the tune of Rs. 5,00,007.80 P. were executed by the Defendant Subsequently the Defendant also acknowledged his liability from time to time. On behalf of the Defendant, an application was filed for seeking leave to defend the suit inter alia aliening that the Branch Manager of the Bank was not authorised to file the suit. The Statement of accounts furnished by the bank with the plaint did not bear necessary certificate as required under the Banker''s Book of Evidence Act. A dispute was raised to some of the entries in the account that these were unauthorised- Details of such entries were given in Annexure ''A'' attached with the application The total amount of those entries was stated to be Rs. 12,.00,000/- Excessive interest was charged. The bank failed to credit the amount of handiest in time and the Defendant claimed interest on that account. The bank stopped allowing credit facility. The claim of the Bank was based on blank documents which were got signed from the Defendant. The suit was barred by time The suit was premature. This application was strongly Contested by the bank controverting all the allegations of the Defendant.

2. The trial Sub Judge on going through the documents produced by the back noticed that in the revival letters dated October 4.1982, the digit ''2'' appeared to be over-written. On that account he observed that it was a debateable question of fact to be determined after receiving evidence whether the revival letters were really signed on that day or not. That would be relevant to determine the question of limitation With respect to subsequent revival letters dated August 10, 1985, it was observed that the same were executed after expiry of the period of limitation if revival letters of 1982 was to be excluded. Thus, it was difficult to reject summarily the plea of the Defendant, Further it was observed that the Defendant had questioned entires to the tune of Rs. 12,00,000/- and since the Plaintiff-bank had not produced all the vouchers to justify those entries and taking into consideration the revival letters of 1982 which were doubtful documents would also raise a question of limitation on the basis of the revival letters, as already noticed above. The admissions made in those revival letters showed that the debts were more than Rs. 12,08,000/-. Finally it was observed that since the case set up by the Defendant could not be said to be wholly frivolous, the leave to defend the suit was granted on furnishing security of Rs. 25,00,000/-.

3. The Supreme Court in Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation, , while interpreting the scope of Order 37 Rule 3 of the CPC laid down the following principles to be kept in view while deciding such cases:-

(a) If the Defendant satisfies the Court that he has a good defence to the claim on its merits the Plaintiff is not entitled to leave to sign judgment and the Defendant is entitled to unconditional leave to defend.

If the Defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the Plaintiff is not entitled to sign judgment and the Defendant is entitled to unconditional leave to defend.

If the Defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shows such a state of facts as leads 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 but 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.

If the Defendant has no defence or the defence set up is illusory or sham or practically moonshine then oridinarily the Plaintiff is entitled to leave to sign judgment and the Defendant is not entitled to leave to defend.

If the Defendant has no defence or the defence is illusory or sham or practically moonshine 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.

The file of the case was summoned and perused. All the necessary documents relating to the grant of loan were signed by K. Vaidyaua-than as proprietor of Mohali Forge. The loan was granted in July, 1980. The first revival letter is of October 4, 1982 with respect of Rs. 5,00,000/- loan facility. There is no doubt that there is over-writing on figure ''2'' but that will not make any difference as the subsequent revival letter is of 1985 wherein there is no over-writing. There are further acknowledgment-confirmations of these accounts as on December 31, 1984 duly signed by K. Vaidyanathan as proprietor of Mohali Forge. There is no over writing or interpolation in these confirmation slips. These confirmation slips read with acknowledgment of 1982 prima facie would bring the suit within time. As noticed above, it is not the case of the Defendant as pleaded that digit ''2'' in the revival letters were interpolated afterwards. Defendant''s case is that he signed blank Papers. Digit ''2'' was simply over-written and not another digit altered to ''2''. It may be noticed that at this stage only prima facie opinion is required to be expressed.

4. The statement of account furnished by the bank along with the suit bears necessary certificate regarding its correctness. That being the position, it was not necessary for the bank to produce all documents, vouchers etc. in support of all the entries in this account along with the suit. No doubt, the Defendant is raising a dispute of certain items but at this stage it cannot be said that the presumption attached to the statement of accounts is negatived by mere allegation. It may be noticed that in Annexure ''A'', the items challenged relate to 1983, 1984, 1985 and 1986. If confirmation slips are taken into consideration, some of the items regarding which a dispute is now being raised would be covered by those confirmation slips. The case of the Defendant thus would not fall in items (a) and (b) of the principles laid down by the Supreme Court. As observed by the Sub Judge, the claim of the Defendant may not be wholly frivolous. If that is so, it is item (c) of the principles laid down by the Supreme Court which would cover the case in hand. That being the position, it is discretionary with the Court while allowing leave to defend the suit to impose conditions of furnishing security or not in the facts and circumstances of the case, it cannot be said that such discretion has been illegally exercised by the trial Court

5. For the reasons recorded above, this revision petition is dismissed. However,

there will be no order as to costs Parties through the counsel may appear in the trial Court on 9-1-1989. Records be sent.

