(1998) 04 SC CK 0012

In the Supreme Court Of India

Case No : C.A. No. 2510 of 1998 (Arising out of SLP (C) No. 20843 of 1996)

M/s. Sunil Enterprises and Another APPELLANT

Vs

SBI Commercial and International Bank Ltd. RESPONDENT

Date of Decision : 30-04-1998

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 43

Citation : AIR 1998 SC 2317 : (1998) AIRSCW 2224 : (1998) 2 BLJR 1113 : (1998) 92 CompCas 772 : (1998) 2 CTC 382 : (1998) 3 JT 341 : (1998) 3 MLJ 98 : (1998) 120 PLR 608 : (1998) 2 RLW 318 : (1998) 3 SCALE 377 : (1998) 5 SCC 354 : (1998) 4 Supreme 324

Hon'ble Judges : S. Rajendra Babu, J;S. C. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rajendra Babu, J.—Leave granted.

2. This appeal arises out of an order made by the High Court of Bombay affirming an order made by the Trial Judge in a summary suit filed under Order 37 of C.P.C. whereby the Trial Judge had issued summons for Judgment and made it absolute against the appellants and consequently passed a decree against them for a sum of Rs. 37,51,519.43 with interest and certain other incidental charges. A suit was brought by the respondents on the basis of bills of exchange in respect of which the appellants are the acceptOrs. M/s. Khanna Sales Corporation are the drawees of the bill who have Local Bill Discounting facility with the respondents. Under the said facility, M/s. Khanna Sales Corporation discounted the bills of exchange. The respondent bank made payments to M/s. Khanna Sales Corporation on the basis of the bills of exchange. Since the amounts under the Bills of Exchange were not paid and received by the respondent bank when they were presented within the stipulated time and since demand did not come forth despite notice of demand, the respondent bank filed a summary suit as aforesaid. Nine bills of exchange had been drawn by M/s.

Khanna Sales Corporation. The appellants before us sought leave to defend themselves contending that the Bills of Exchange were executed without consideration as neither the goods were sold nor supplied in the transaction in question. The appellants alleged fraud, collusion and connivance between the officers of the respondent and M/s. Khanna Sales Corporation. The learned Trial Judge refused the leave to defend the suit. On appeal, the Division Bench considered the matter and held that the undisputed position is that the appellants are the acceptors of the Bills of Exchange in question and that no goods were supplied or actually sold by M/s. Khanna Sales Corporation to the appellants and, therefore, the Bills of Exchange were not supported by consideration. Section 43 of the Negotiable Instruments Act saves the right of the holder in due course like the respondent to claim the amount of Bill of Exchange. In certain other instances the Bills of Exchange had been negotiated through the bank without any difficulty and therefore, Division Bench was of the view that there is no logic in the submission made on behalf of the appellants. If any fraud has been alleged that could be reflective on their conduct and, therefore. It would be too much for the respondent bank or their officers to be instrumental in perpetration of such a fraud by the appellants and M/s. Khanna Sales Corporation and, therefore, the appellants cannot escape their liability and responsibility under the Bills of Exchange in question. On that basis they took the view that pleas raised by the appellants were frivolous and have no (sic) and merits in their defence.

3. In this appeal it is contended that what should be examined at the stage of grant of leave to defend is whether there was a real or a (sic) defence and whether the facts alleged by the appellants of established would be a good defence and the trial court should not go into the question whether the facts alleged were true or not, as that situation would arise only after leave was granted and at the trial. That a condition as to security could be imposed if the Court was of the opinion that the defence was put forward with a view to prolong this suit.

4. The position in law has been explained by this Court in Santosh Kumar Vs. Bhai Mool Singh, , Milkhiram (India) Private Ltd. and Others Vs. Chamanlal Bros., and Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation, . The propositions laid down in these decisions may be summed up as follows:-

a) If the defendant satisfies the Court that he has a good defence to the claim on merits, the defendant is entitled to unconditional leave to defend.

b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence, although not a possibly good defence, the defendant is entitled to unconditional leave to defend.

c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is, if the affidavit discloses that at the trial he may be able to establish a defence to the plaintiff's claim, the court may impose conditions at the time of granting leave to defend the conditions being as to time of trial or made of trial but not as to payment into Court or furnishing security.

d) If the defendant has no defence, or if the defence is sham or illusory or practically moonshine, the defendant is not entitled to leave defend. (e) If the defendant has no defence or the defence is illusory or sham or practically moonshine, the Court may show mercy to the defendant by enabling him to try to prove a defence but at the same time protect the plaintiff imposing the condition that the amount claimed should be paid into Court or otherwise secured.

In fact in identical matters on the file of the said High Court is summary suit No. 2963 of 1990 Dena Bank vs. M/s. Sunil Enterprises and summary suit No. 1153 of 1989 Bank of India vs. Mahendra Sarabhai Choksi, leave to defend had been granted to defendants.

5. In those cases the circumstances arising are that the Bill of Exchange were accepted by the defendant even though they had already discharged earlier Bills of Exchange as and when they were due and the bank had continued to pay out such large amounts of Bills of Exchange accepted by the party who is already a defaulter. It is also contended that some of the Bills of Exchange were mere secondary documents and, therefore, these matters require examination. It cannot be said that the defence raised by the appellants is totally defenceless or moonshine or illusory as noticed earlier in the course of this order. Therefore, the view taken by the High Court that appellants have absolutely no prima facie case may not be correct. And in the circumstances, we allow appeals set aside the order made by the Division Bench and the judge on the original side of the Bombay High Court and dismiss the Summons for Judgment, grant leave and direct unconditional leave to the defendant to defend the suit. Appeals, therefore, stand allowed accordingly.

