

(2000) 06 GUJ CK 0056

In the Gujarat High Court

Case No : Civil Revision Application No. 266 of 2000

Nirmala Photographics Pvt. Ltd.

APPELLANT

Vs

Phil Corporation Limited

RESPONDENT

Date of Decision : 16-06-2000

Acts Referred:

Citation : (2000) 06 GUJ CK 0056

Hon'ble Judges : D.P. Buch, J

Bench : Single Bench

Advocate : A.R. Majmudar, for the Appellant; Amar N. Bhatt, for the Respondent

Judgement

D.P. Buch, J.—The petitioner in this Civil Revision Application is the original plaintiff in Summary Civil Suit No. 6359 of 1998 before the Learned Judge of the City Civil Court at Ahmedabad. The petitioner-plaintiff preferred the aforesaid Civil Suit against the respondent, who happens to be the defendant before the Trial Court, for the recovery of money. This was a summary suit under Order 37 of the Code of Civil Procedure. The respondent applied before the Trial Court for leave to defend. The Trial Court heard the parties and passed the following order:-

"In the result, though the defendant is required to be given a leave to defend, for trial of issue as to whether it did not receive the goods in question, it is required to be put to conditions because it has issued several cheques to the plaintiff and there is a presumption u/s 139 of the Act to an effect that cheques were issued for consideration. The defendants No. 2 and 3 are stated to be the directors of the defendant No. 1 Company. There are no substantial averments affixing the liability of the disputed bills upon the defendants No. 2 and 3 in suit No. 1804/97. Therefore, they deserve unconditional leave to defend. Therefore, unconditional leave to defend to defendants No. 2 and 3 is granted. Under the circumstances, while allowing the defendant to defend the case, the defendant shall deposit Rs.1,11,36,144/- before this Court within six weeks from today. After the said amount is deposited, the defendant shall, if it so desires, furnish a

written statement within the period of three weeks thereof. The Civil Suit shall be now listed in the list of long causes suits in due course.

So far as the Summary Suit No. 6359/98 is concerned, in my opinion, in view of above discussions, the present plaintiff i.e. the defendant in the said suit, is required to be given unconditional leave to defend the case. The defendant of Summary Suit No. 6359/98 shall file the written statement if it so desires within three weeks from today. The said case also shall now be transferred to the list of long causes suits in due courses. Both the summons for judgment are disposed of accordingly."

2. Feeling aggrieved by the aforesaid judgement and order of the Trial Court, the petitioner has preferred this revision application before this Court.

3. During the course of hearing, a point has arisen as to whether Civil Revision Application would lie against the judgement and order of the Trial Court granting conditional leave to defend.

4. The Learned Advocate for the respondent referred to and relied upon a decision of this Court in Civil Revision Application No. 1216 of 1998 in the case of Apex Petro Chemicals Ltd. Vs. Indo Nissan Oxo Chemical Industries Limited rendered by Honourable Justice D.C. Srivastava on 11.9.1998.

5. In the said case an order was passed and leave to defend was granted on condition of payment of 50% of the claim of the suit in the Court with a liberty to the plaintiff to withdraw the deposited amount. The defendant preferred the said revision application and this Court found that this was a conditional leave to defend and therefore it was not a case decided and secondly the revision would not lie. In Para 4 of the said judgement, the Court has observed as follows:-

"4. The expression "case decided" was interpreted by the Apex Court in Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, . It was observed by the Apex Court that "every order of the Court in the course of the suit does not amount to a case decided. The case may be said to be decided if the court adjudicates for the purpose of the suit some right or obligation of the parties in controversy; every order in the Suit cannot be regarded as a "case decided" within the meaning of Section 115." In this case objection to a question put to a witness was over ruled and the question was allowed to be put to a witness. It was held that such order does not amount to a case decided."

6. On appreciation of the aforesaid decision, this Court found in the aforesaid matter that this was not a case decided and therefore revision would not lie. Consequently, the said revision was dismissed by this Court.

7. On the other hand, the Learned Advocate for the petitioner has strongly contended that revision would lie against the orders passed by the Civil Court granting leave conditionally or unconditionally.

8. Now it is very clear that so far Order 37 is concerned, the Court has 3 options as follows:-

- i. To grant leave to defend unconditionally.
- ii. To refuse to grant permission to defend totally.
- iii. To permit leave to defend on conditions imposed by the Court.

9. It appears to be the approach of this Court in the aforesaid decision that if leave is granted unconditionally then it would be case decided and revision would lie. Similarly, the approach of the Court is that if the leave to defend has been turned down totally then also it would be a case decided and therefore the revision would lie.

10. However, the approach of the Court is that if the leave is granted conditionally then the balance is struck and therefore it cannot be treated to be a case decided and therefore revision would not lie.

11. With great respect to the Learned Judge, I am not in a position to agree with the 3rd point mentioned above.

Suppose there is a suit of Rs.1 lach, one court passed an order that the leave to defend is granted on condition that the defendant deposits an amount of Rs.10000/-. The Second Court passed an order for deposit of Rs.50,000/-. The Third Court passed an order for the deposit of Rs.90000/-. The 4th Court will pass an order for the deposit of the full amount. A question would arise as to whether the balance could be said to have struck in all the aforesaid events and whether it would be treated to be a case decided and whether a revision would lie.

12. Now in the first instance, a very meagre amount would be deposited in the Court and still the defendant will be at liberty to defend the suit on merits. In other case, the liability of the defendant would be more and more. Therefore, there would be different cases having different facts. In that view of the matter, I am of the view that simply because the balance has been struck between the plaintiff and the defendant and leave to defend has been granted conditionally, it cannot be said that it is not a case decided. If the meagre amount is ordered to be deposited, the plaintiff would be put to suffer. If higher amount is ordered to be deposited, the defendant would be put to suffer. So far the last example is concerned, the defendant would be getting leave to defend provided he deposits almost the full amount of the claim of the plaintiff. Under the circumstances, I am of the view that it is not possible to agree with that the aforesaid decision of this Court that when conditional leave to defend has been granted it would not amount to case decided within the meaning of Section 115 of the Civil Procedure Code.

13. Even otherwise, the matter requires consideration at length. Therefore a point has arisen as to whether a case can be said to be decided when:

- i. a conditional leave to defend has been granted.
- ii. when leave has been totally refused &
- iii. when leave to defend has been granted unconditionally.

14. A decision was referred from M/s. Mechalec Engineers & Manufacturers Vs. M/s. Basic Equipment Corporation reported in 1977 SC 577. There it has been observed that where on an application under S. 115 against an order of the trial Court granting unconditional leave to defend, the High Court while holding that triable issues arose for adjudication, nevertheless, concluded that defences were not bonafide and granted leave to defend on payment of the amount into court. Therefore it was held that it is only in cases where the defence is patently dishonest or so unreasonable that it could not reasonably be expected to succeed that the exercise of discretion by the Trial Court to grant leave unconditionally may be questioned. In the instant case, there was no ground for interference under S. 115 of the Civil Procedure Code.

15. The point was that this matter went to the Higher Court from the Civil Revision Application. However it does not appear to have been decided as to whether or not a civil revision application would lie against an order passed under Order 37 of the CPC for granting leave to defend.

16. In M/s. K.K. Arora & Sons V. M/s. Meghraj & Sons reported in 1987(1) 427, the matter was entertained in Civil Revision Application. However, there it was not a point before the Court as to whether the revision would lie.

17. One more decision of this Court in United Industries Vs. Dalwadi & Co. reported in AIR 1969 Guj. 18 was also a decision u/s 115 of the CPC challenging the order granting leave to defend subject to condition of depositing certain sum towards the plaintiff's claim. The order was not interfered with in the revision but there was no argument that the revision did not lie against the said order.

18. In Vijakumar K. Shah Vs. Firm of Pari Nareshchandra and Another, , it was also a decision in the Civil Revision Application. The matter had also come in the revision application before this Court against the orders passed in a summary suit under Order 37 Rule 1 of the Code of Civil Procedure.

19. Therefore, it is clear that in the aforesaid matters which were in Civil Revision Application and Civil Revision Application have been entertained by this Court against the orders of the Civil Court passed under Order 37 of the CPC for granting leave to defend or otherwise.

20. However, in all such cases, there was no plea that the revision did not lie and therefore the said aspect has not been considered and decided in these matters.

21. In the aforesaid view of the matter, when the revision application have been entertained in the past in so many matters and even the matters have gone upto the Hon'ble Apex Court from the said decision in the Civil Revision Application of this Court and when the said point has also not arisen before the Honourable

Apex Court, it would be just and proper to refer the matter to a Higher Bench. Even otherwise day in and day out such matters are being filed against the orders of the Civil Court relating to the grant of leave to defend or otherwise in summary suits under order 37 of the Civil Procedure Code. Therefore the matter is of great importance to the litigating public at large. Therefore also, it is in the interest of justice as well as of the litigating public at large to have a decision on the aforesaid issue by the larger Bench of this Court.

22. In aforesaid view of the matter, after hearing the Learned Advocates of the parties at length, I am of the decision that the aforesaid matter is required to be placed before & decided by the larger Bench of this Court.

23. In aforesaid view of the matter, the Registry is directed to place the case papers i.e. all the case papers of this Civil Revision Application before the Honourable Chief Justice of this High Court for constitution of a Bench of appropriate strength as the Honourable Chief Justice may deem fit for deciding the case and/or the question above mentioned as the Honourable Chief Justice may deem fit.