
(1992) 02 DEL CK 0019

In the Delhi High Court

Case No : Civil Revision Appeal No. 460 of 1991

Punjab National Bank

APPELLANT

Vs

Ahuja Furnishers (P) Ltd.

RESPONDENT

Date of Decision : 06-02-1992

Acts Referred:

Citation : (1992) 2 BC 32 : (1992) 46 DLT 717

Hon'ble Judges : D.K. Jain, J

Bench : Single Bench

Advocate : S.K. Prathi and D.B. Kalia, for the Appellant;

Judgement

D.K. Jain, J.

(1) This revision petition u/s 115 of the CPC (for short the "Code"), is directed against the order passed by the Addl. District Judge. Delhi on 30 March, 1991 whereby the petitioner/defendant's (termed defendant hereafter) application under Order 37 Rule 3(5) of the Code, seeking leave to defend Suit No. 230 of 1988 has been rejected.

(2) The respondent/plaintiff (formed plaintiff hereafter) instituted a suit against the defendant under the summary procedure prescribed by Order 37 of the Code. It was alleged in the plaint that the defendant being bound by the terms of agreement, allegedly executed by it with the plaintiff, pursuant to the acceptance of plaintiff's quotation for furnishing of defendant's branch at Bhikaji Cama Place, vide Assistant General Manager (B & C's) letter dated 17 October 1984, had failed to make payment of the 5th and final bill in the sum of Rs. 73,779.12P. It was claimed that the said final bill was scrutinised and sanctioned by defendant's architect in terms of the said agreement and, Therefore, it was obliged to make payment of the said bill along with interest thereon for delay in payment. Thus, a decree in the sum of Rs. 86,079.12P. with costs and future interest was prayed for.

(3) On service of summons the defendant filed an application along with requisite

affidavit under Order 37 Rule 3(5) of the Code, seeking leave to defend the suit. It raised various defenses in the application. The suit was sought to be contested, *inter alia*, on the pleas; (i) the alleged contract/agreement relied upon by the plaintiff had not been signed by any authorised officer of the defendant-bank and it was inadmissible in evidence; (ii) the plaintiff had failed to comply with the terms and conditions of the tender submitted by it inasmuch as It failed to supply the material/goods in accordance with the specifications given in the tender and further failed to rectify the defects pointed out to it vide letter dated 20 June, 1988 and 13 Dec., 1988; and (iii) the work having been completed behind the schedule the defendant was entitled to claim and recover the liquidated damages from the plaintiff. The application was resisted by the plaintiff.

(4) The learned Trial Court felt that in the application filed by the defendant, it had taken Inconsistent stand inasmuch as on the one hand it was claiming that the agreement between the parties had not been signed and on the other the defendant was itself relying on the same. The Court found that the defendant was liable to make the payment in terms of para 4 of the said agreement and the defense raised by it was sham, bogus and did not give rise to any triable issue. Aggrieved by this order, the defendant has filed this petition.

(5) I have heard learned Counsel for the parties and have perused the application and the affidavit filed by the defendant seeking leave to defend, as also the reply filed by the plaintiff in opposition to the said application. Having considered the matter thoughtfully I am of the view that the conclusion arrived at by the learned Trial Court is not correct.

(6) As noted above, the defendant in its affidavit has raised a specific defense to the effect that the plaintiff has failed to comply with the terms and conditions of the tender submitted by it and has not supplied the material/goods in accordance with the specifications given therein. It is further alleged that the plaintiff has failed to rectify/remove the defects specifically pointed out to it vide various letters including the letters dated 20 June, 1988 and 13 December, 1988 and thus, it is not entitled to claim any amount. The learned trial Court has not recorded any finding on this specific defense, although it has dealt with other defense of the defendant based on the validity of the agreement. The Court is bound to examine the merits of all the contentions raised In order to obtain leave to defend the suit and failure to do so results in material irregularity. The plea aforesaid, in my opinion, does raise an issue of fact, the truth and good faith of which could only be tested by going into the evidence and thus, this defense raises a plausible and triable issue.

(7) Considering all the facts of the case, I am of the view that leave to defend should be granted subject to deposit of the suit amount in the Trial Court. I am told that the said sum has already been deposited in the execution of the decree. The said amount shall remain in deposit by way of security and the plaintiff will be entitled to withdraw the same in case the suit Is ultimately decreed after trial, subject, however, to the terms of the decree passed.

(8) Meanwhile, to avoid loss to any party, the amount lying in deposit will be put in fixed deposit in a Scheduled bank initially for a period of one year.

(9) In the result, this petition is allowed with no order as to costs. The parties are directed to appear before J the Trial Court on 20.4.1992 on which date the defendant will also file its written statement. The plaintiff will file its replication within four weeks thereafter. The trial Court would thereafter expedite the proceedings in the suit.

(10) The record of the Trial Court be sent back forthwith.