
(2013) 06 CAL CK 0010

In the Calcutta High Court

Case No : A.P.O. No. 156 of 2002 with C.S. No. 453 of 1999

R. Piyarilal Import and Export Limited

APPELLANT

Vs

Sushil Kumar Bajaj

RESPONDENT

Date of Decision : 26-06-2013

Acts Referred:

Citation : (2013) 5 CHN 123 : (2013) 4 WBLR 192

Hon'ble Judges : Subhro Kamal Mukherjee, J;Asim Kumar Mondal, J

Bench : Division Bench

Advocate : Samit Talukdar and H. Chakraborty, for the Appellant; Rudraman Bhattacharya and S. Roy, for the Respondent

Judgement

Subhro Kamal Mukherjee, J.—This is an appeal against judgment and order dated December 13, 2001 passed by the Hon"ble Single Judge of this Court in C.S. No. 453 of 1999, inter alia, directing the defendant in the said suit to furnish a bank guarantee of Rs. 7,00,000/- (Rupees seven lakh) only, in favour of the learned Registrar, Original Side of this Court, within two weeks after the winter vacation. The defendant of C.S. No. 453 of 1999 as the plaintiff instituted C.S. No. 335 of 1998 against the plaintiff in C.S. No. 453 of 1999, inter alia, for recovery of Rs. 44,61,736.30. (Rupees forty four lakh sixty one thousand seven hundred thirty six and thirty paise) only, with interest.

2. Subsequent thereto the defendant in C.S. No. 335 of 1998 instituted this suit, that is, C.S. No. 453 of 1999 for recovery of Rs. 10,06,791.28. (Rupees ten lakh six thousand seven hundred ninety one and twenty eight paise) only as pleaded in paragraph 7 of the plaint and Rs. 1,93,992.44. (Rupees One lakh ninety three thousand nine hundred ninety two and forty four paise) only as pleaded in paragraph 12 of the said plaint, with interest.

3. The plaintiff in C.S. No. 453 of 1999 applied under Chapter XIII A of the Original Side Rules for a summary judgment. The defendant in C.S. No. 453 of 1999 prayed for unconditional leave to defend.

4. The Hon''ble Single Judge held that there were triable issues, and, therefore, the plaintiff was not entitled to final judgment. Nevertheless, the Hon''ble Single Judge directed the defendant to furnish a bank guarantee for Rs. 7,00,000/- (Rupees seven lakh) only in favour of the learned Registrar, Original Side of this Court.

5. In *Sm. Kiranmoyee Dassi and Another v. Dr. J. Chatterjee*, reported in 49 Calcutta Weekly Notes 246, certain propositions were laid down for the proper construction of the rules laid down in Chapter XIII A of the Original Side Rules.

6. S. R. Das, J [as His Lordship then was] laid down the following propositions:

(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.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide 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.

(c) 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 plaintiffs 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.

(d) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) 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.

7. The aforementioned propositions were approved, subsequently, by the Apex Court in *Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation*, and also, in *State Bank of Saurashtra Vs. Ashit Shipping Services (P.) Ltd. and Another*,

8. When the Hon''ble Single Judge found that there were triable issues, there was no occasion for His Lordship to direct furnishing of security by the defendant.

9. Mr. Bhattacharyya, learned Advocate appearing for the plaintiff/respondent,

submits that the defendant has accepted money from the plaintiff, and, therefore, the Hon''ble Single Judge was right in directing the furnishing of security.

10. This was not an application under Rule 5 of Order XXXVIII of the Code of Civil Procedure. No case for attachment before judgment was made out requiring the Hon''ble Single Judge to direct furnishing of security.

11. When the Hon''ble Single Judge held that the defendant raised triable issues, the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave of defendant.

12. We, therefore, set aside the order impugned, and grant, by modifying the order impugned, unconditional leave to the defendant to defend the suit.

13. Mr. Bhattacharyya prays for early disposal of the suit.

14. We grant liberty to the parties to approach the Hon''ble Single Judge with the prayer for expeditious disposal of the suit.

15. However, we make it clear that we have expressed no opinion on the issues involved in the suit; all issues are kept open.

16. The defendant is directed to file its written statement, if not already filed, by one month. We direct the parties to bear their respective costs in this appeal.

Asim Kumar Mondal, J.

I agree.