(1995) 06 GUJ CK 0003

In the Gujarat High Court

Case No : C.R.A. No. 1396 of 1994

Shyamsunder Niranjanlal Gupta APPELLANT

Vs

Alpa Marketing Enterprises and Others RESPONDENT

Date of Decision : 19-06-1995

Acts Referred:

Citation : (1995) 06 GUJ CK 0003

Hon'ble Judges : Y.B. Bhatt, J

Bench : Single Bench

Advocate : V.H. Patel, for the Appellant; M.B. Gandhi, for the Respondent

Final Decision : Allowed

Judgement

Y.B. Bhatt, J.—The Respondents herein are the original Plaintiffs of Summary Suit No. 5792 of 1993 filed in the City Civil Court at Ahmedabad, wherein the present Petitioner is described as the original Defendant.

2. The Plaintiffs had filed the suit admittedly against the Defendant which is described in the suit as "M/s. Nemichand Dharampal, proprietary concern of M/s. Shyamsunder Niranjanlal Gupta". The Plaintiffs contended that the Defendant had purchased washing power from the Plaintiffs'' firm from time to time and on this account the sum claimed in the suit is due and payable by the Defendant to the Plaintiff.

3. The Petitioner Defendant filed his application for leave to defend wherein the following substantial contentions have been take. He first contended that the bills placed by the Plaintiff were in the name of so-called proprietary firm, whereas he is neither the proprietor nor a partner in the said firm. It was specifically contended that the said firm of M/s Nemichand Dharampal was not a proprietary firm and in any case he was merely a manager of the said firm for some time during the period of transactions between the Plaintiffs and the said firm. He further contended that the Defendant firm, though described as a proprietary firm belonging to him, is in fact a partnership firm having four partners whose

names are stated in the leave to defend application. He also contended that he is not one of the aforesaid four partners. He further contended that he had not purchased the said proprietary firm. In fact he has contended that the said firm is a partnership firm for the relevant period during which the transactions took place between the Plaintiffs and the said firm, and to substantiate this contention he placed on record an order of the Sales Tax Authority of Rajasthan dated 6the April 1993 that the said firm is a partnership firm for the period pertaining to the transaction between the Plaintiffs and the firm.

4. On the basis of these contentions the trial court ought to have appreciated that at no point of time the aforesaid firm was run or managed by the Defendant as a proprietary firm. It also appears that the trial court failed to take into account in the true and correct perspective, the scope and impact of the contentions raised by the Defendant in the leave to defend application. In this context the trial court also failed to take into account the contention of the Defendant that the agreement produced by the Plaintiffs indicating that the Defendant had agreed to purchase the said firm, was an agreement seriously disputed by the Defendant. Not only was the agreement disputed, but the Defendant also disputed by the so-called signature alleged to have been put at the foot thereof, as being his signature. The trial court also apparently failed to appreciate scope and impact of the order passed by the Sales Tax Authority of Rajasthan holding that the said firm was not a proprietary firm of the Defendant, but was a partnership firm during the period of transactions between the Plaintiffs and the said firm. The trial court also failed to appreciate the scope and impact of two certificates issued by the bankers indicating that the said firm is a partnership firm.

5. In view of the contentions raised by the Defendant and in view of the prima facie material produced by him in support of the aforesaid contentions, the trial court ought to have come to a conclusion that these contentions triable issues which are required to be raised and decided at the final hearing stage of the suit. The trial court ought to have come to a conclusion that these contentior raise triable issues which are required to be raised and decided at the final hearing stage of the suit. The trial court ought to have appreciated that this is not a case where the defence is dishonest or frivolous, and/or that the various contentions raised by the Defendant would not raise any triable issues. In the premises aforesaid that trial court was in error in imposing a substantial condition upon the Defendant to deposit in court a sum of Rs. 1 Lac as a condition of grant of leave to defend. The trial court ought to have, on the facts and circumstances of the case, granted the Defendant unconditional leave to defend,

6. In the premises aforesaid the impugned order herein is clearly erroneous and deserves to be quashed and set aside. The same is accordingly quashed and set aside. The Petitioner-defendant is granted unconditional leave to defend the suit. The suit shall stand transferred to the List of Long Causes, and shall be proceeded further with in accordance with law.

7. This revision is accordingly allowed. Rule is made absolute with no order as to costs. Ad interim relief vacated.

