
(1988) 11 BOM CK 0050

In the Bombay High Court

Case No : Civil Revision Application No. 509 of 1987

Yogendra Patwardhan

APPELLANT

Vs

Khandelwal Hermann Electronics Ltd.

RESPONDENT

Date of Decision : 16-11-1988

Acts Referred:

Bombay Stamp Act, 1958 — Section 34
Civil Procedure Code, 1908 (CPC) — Order 37 Rule 1

Citation : (1989) 1 BomCR 96 : (1988) 90 BOMLR 560 : (1989) MhLj 310

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Advocate : D.M. Vora, for the Appellant; A.K. Abhyankar and Vivek Shiralkar, for the Respondent

Judgement

H. Suresh, J.—This revision application is filed by the defendant against an order, on a Summons for Judgement, granting conditional leave to defend, on deposit of the full amount of claim in the suit.

2. The plaintiffs had employed the present petitioner as a sales engineer under a letter of appointment dated January 6, 1986. While in service the plaintiffs came to know that there was to be a fair in West Germany. The plaintiff decided to send some of their workmen and personnel to the said fair. It is the plaintiffs' case that before selecting the personnel to attend the fair, it was made clear to each person including the defendant that the plaintiffs were sending their employees to the said fair with the sole object of acquiring the know-how for the benefit of the plaintiffs company and with that object in mind the plaintiff informed them that they would be spending large amounts for the said tour, per person. The plaintiff desired that the persons who acquired such knowledge should remain with the plaintiffs Company for a minimum period of one year. As a guarantee for the same, apart from individual oral assurance, the plaintiffs had requested the defendant and other members of the group to execute an undertaking in writing in favour of the plaintiff. It is their case that the defendant

accordingly gave the necessary undertaking which is dated October 29, 1986. The said undertaking stipulated that the defendant should be in their employment till November 30, 1987 and if the defendant were to leave the services of the plaintiffs without their prior consent and within the aforesaid period, the defendant shall pay to the plaintiffs a sum of Rs. 12,000/-. The suit is based on this writing. The allegation is that immediately after the return from West Germany on or about December 8, 1986, the defendant resigned from the plaintiffs employment. The plaintiffs have filed the suit on the basis of the said writing that the defendant has committed breach of the said undertaking.

3. The defence is that the defendant had signed the said writing under compulsion and the tour was not for the purpose of learning any technique but it was sightseeing tour. He further alleges that he was compelled to sign the writing. While certain others were taken abroad without any such writing.

4. The defendant has also taken up a contention that the said writing was not admissible as it was not properly stamped. The learned Judge takes a note of this contention, but he observe that this question can be gone into at a later stage at the final hearing of the suit. It is here, he makes a fundamental error.

5. What is to be noted is that a Summary Suit is a suit on a document. Therefore, if the document itself is not admissible or cannot be acted upon, for want of proper stamp, no Summary Suit can lie. There is a basic difference between an ordinary suit in which a document is to be tendered in evidence, and a Summary Suit which is a suit on the document itself. In all ordinary suits, documents may be tendered and the question of admissibility of documents would then arise and the Court will then decide the question according to the Stamp Act. But in a summary suit at the time of the filing of the suit, the document itself upon for want of requisite stamp, the suit is not maintainable as a summary Suit. That is why in a summary suit, if there is no defence to the suit, on production of the document itself, a decree is passed without recording any evidence as such. But the document must be such as can be acted upon.

6. Under Order 37, Rule 1 of the Code of Civil Procedure, summary Suits can be filed on bills of exchange, hundies and promissory notes and where the debt sought to be recovered is a liquidated amount, if the same arises on a written contract, or on an enactment or on a guarantee. In the case of negotiable instrument there is a statutory presumption that the same is for consideration and there is no question of any further proof in that behalf. Similarly in the case of a debt if the amount is a liquidated amount, the written contract itself is the proof of the same. On production of these documents, if the documents are otherwise valid as can be acted upon, and if there is no defence, the decree will follow as a matter of course. But if the document suffers from any defect such as want of requisite stamp, or because of any other inherent infraction, evidence will have to be led on the original consideration. In that case, it ceases to be a summary suit. In the present case, the document, though termed as an undertaking, was, in fact, a contract or a bond and in either case, it attracted the

stamp duty, and having regard to section 34 of the Bombay Stamp Act, 1958, the Court could not have acted upon the same.

7. On the other hand, if this document is to be treated as a mere writing I am afraid, no summary suit lies on a mere writing, even if the amount mentioned is an agreed amount. Summary suit being a special suit where the right to defend depends on leave being granted, that too very often on terms such as deposit of a part or whole of the amount, will have to be construed strictly, and the cause of action must arise on the items mentioned under Order 37, Rule 1 of the Code of Civil Procedure. No extension of the items, not falling within the scope of the said provision, is legally permissible.

8. Even on merits, Prima facie, trible issues do arise in the present case and unconditional leave to defend ought to have been granted.

I, therefore, pass the following order :

I set aside the impugned order.

I grant unconditional leave to defend the suit.

The petitioner to file his written statement within a period of twelve weeks from today.

Usual orders for discovery and inspection.

Suit to appear on board in the ordinary course.

Rule is accordingly made absolute with no order as to costs.