

Baljinder Singh Vs. Jagan Nath

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Court : Punjab and Haryana

Decided On : Mar-18-2004

Reported in : IV(2004)BC36; (2004)137PLR467

Judge : M.M. Kumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 37

Appeal No. : Civil Revision No. 1418 of 2004

Appellant : Baljinder Singh

Respondent : Jagan Nath

Advocate for Def. : Mr. Ashok Singla

Advocate for Pet/Ap. : Ashok Singla, Adv.

Disposition : Petition dismissed

Judgement :

M.M. Kumar, J.

1. This petition is filed under Article 227 of the Constitution prays for quashing order dated 11.2.204 passed by the Additional Civil Judge (Senior Division), Dabwali directing that the Bank guarantee equal to the amount claimed by the plaintiff-respondent in the suit i.e. Rs. 1,58,240/- be furnished by the defendant-

petitioner. The leave to defend filed by the defendant-petitioner was allowed subject to the aforementioned condition.

2. Brief facts of the case are that the plaintiff-respondent filed a Civil Suit No. 1060 of 29.8.2003 under Order XXXVII of the Code of Civil Procedure, 1908 (for brevity 'the Code') for recovery of a sum of Rs. 1,58,240/0 (Rs. 92,000/-) as principal plus Rs. 66,240/- as interest upto the date of filing the suit), on the basis of pronote and receipt dated 22.8.2000 alleged to be executed by the defendant-petitioner in favour of the plaintiff-respondent. During the pendency of the suit, the defendant-petitioner filed an application dated 6.10.2003 praying for grant of leave to defend. The plea set up by the defendant-petitioner in the application that he did not execute the alleged pronote and receipt in favour of the plaintiff-respondent. It was further asserted that the defendant-petitioner used to sell his crop at the shop of the plaintiff-respondent who is a commission agent and there had been business dealing between them. It has been alleged that the plaintiff-respondent obtained signatures of the defendant-petitioner on blank pronote by representing that signatures from every farmer on the blank pronote as security were obtained and after settling the accounts, the blank pronote would be returned back to the concerned farmer. In reply, the plaintiff-respondent took the plea that as a matter of fact, an amount of Rs. 92,000/- was borrowed by the defendant-petitioner from him and a pronote in token of the aforementioned borrowing was got duly executed along with the receipt in the presence of the witnesses. There was a promise to repay the borrowed amount on demand along with agreed rate of interest at the rate of 2% per month. The allegation of the defendant-petitioner with regard to selling of crop has been denied. It has also been denied that the signatures of the defendant-petitioner were obtained on a blank pronote.

3. The Civil Judge after hearing the arguments of the learned counsel for the parties recorded a finding that the defence raised in the application for leave to defend looked to be illusory because it has been established en record that pronote and receipt in question bear the signatures of the defendant-petitioner as the signatures have not been denied. It has further been observed that a prudent man in the prevailing times would not sign a blank pronote or a receipt without obtaining the amount of consideration mentioned therein. The Civil Judge,

however, allowed the leave to defend by recording the following order:-

'In the present case also, this court is of the view that the defence taken by the defendant seems to be illusory because it is established on record that pronote and receipt in question bear the signatures of the defendant and it cannot be expected from a prudent person that he would sign a blank pronote or receipt without obtaining any amount. But in the interest of justice and in view of the aforesaid findings given by Hon'ble Apex Court and Hon'ble High Court in the case laws cited above this court is of the view that an opportunity should be granted to the defendant to prove his aforesaid defence though the same seems to be illusory but at the same time, the interest of the plaintiff should also be protected and the same can be protected by imposing a condition upon the defendant for furnishing bank security in respect of the amount claimed by the plaintiff in the present suit. Accordingly, the instant application filed by the applicant/defendant for seeking permission for leave to defend the present suit is hereby allowed subject to furnishing of bank guarantee by the defendant equal to the amount claimed by the plaintiff in the present suit i.e. Rs. 1,58,240/-. The defendant is directed to furnish bank guarantee within a period of one month from today.

4. Mr. Ashok Singla learned counsel for the defendant-petitioner has vehemently argued that by virtue of direction issued by the Civil Judge to the defendant-petitioner to furnish the bank guarantee, the leave to defend as granted by him has become illusory and in fact a complete denial. According to learned counsel, the pronote as well as the receipt are the result of fraud and misrepresentation.

5. After hearing the learned counsel, I am of the considered view that once the defendant-petitioner has failed to dispute his signatures on the pronote and the receipt then, prima facie, it has to be accepted that he executed the aforementioned documents. In view of the aforementioned findings recorded by the Civil Judge, the direction to furnish the security cannot be termed as overstepping the jurisdiction or in fact denying the opportunity to defend the suit. The Supreme Court in *Sunil Enterprises and Anr. v. SBI Commercial and International Bank Ltd.*, 1998(5) S.C.C. 354 has examined and analysed the judgments in the case of *Santosh Kumar v. Mool Singh*, A.I.R. 1958 S.C. 321; *Milkiram (India)*

Private Ltd. v. Chaman Lal Bros., A.I.R. 1965 S.C. 1698 and Michalec Eng, & Mfg. v. Basic Equipment Corporation, A.I.R. 1977 S.C. 577 and extracted the following propositions;-

(a) If the defendant satisfies the Court that he has a good defence to the claim on merits, 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 or reasonable defence, although not a possibly good defence, 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 if the affidavit discloses that at the trial, he may be able to establish a defence to the plaintiff's claim, the Court may impose conditions at the time of granting leave to defend - the conditions being as to time of trial or more or trial court but not as to payment into Court or furnishing security.

(d) If the defendant has no defence, or if the defence is sham or illusory or practically moon-shine the defendant is not entitled to leave defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moon-shine, the Court may show mercy to the defendant by enabling him to try to prove a defence but at the same time protect the plaintiff imposing the condition that the amount claimed should be paid into Court or otherwise secured.'

6. When the principles settled by the Supreme Court in the aforementioned judgments are applied to the facts of the present case, it becomes evident that the proposition (e) would be fully applicable to the present case. The Civil Judge while recording the finding that the defence set up by defendant-petitioner is illusory he has enabled him to make an attempt to prove his defence. But at the same time, it has been ensured that the amount claimed by the plaintiff-respondent is secured by directing the defendant-petitioner to furnish bank guarantee. There is no illegality in the impugned order warranting interference of this Court. The learned Civil Judge has rightly placed on the judgment of the Supreme Court in M/s Sunil Enterprises case (supra).

7. For the reasons recorded above, this petition fails and the same is dismissed.

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