Syed Moosa Emami Vs. Sunil Kumar

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Court : Delhi

Decided On : Aug-23-1982

Reported in : [1984]56CompCas212(Delhi); 22(1982)DLT50; 1982RLR724

Judge : Yogeshwar Dayal, J.

Acts : Code of Civil Procedure (CPC), 1908 - Order 37, Rule 1

Appeal No. : Civil R. Appeal No. 332 of 1982

Appellant : Syed Moosa Emami

Respondent : Sunil Kumar

Advocate for Pet/Ap. : Y.R. Sharma and; Pnkshit Raj, Advs

Judgement :

Yogeshwar Dayal, J.

(1) This revision is directed against an order of trial court dt. 5.12.81 whereby the learned trial Court accepted an application filed on behalf the respondents for leave to appear and contest the suit purporting to have been filed under the provisions of Order 37 of the C.P.C.

(2) The plaintiff had filed a suit purporting to be under Order 37 of the Civil Procedure Code for the recovery of Rs. 10,000.00 allegedly on the basis of two

cheques.

(3) The case of the plaintiff is that he is permanent resident of Iran and has come to India for treatment of his eyes. During the stay in Delhi, the planintiff came into contact with deft. No 2 and became his close friend. It was stated in the plaint that deft. No. 1 is the son of deft. No. 2. It was further stated that deft No. I requested the plaintiff to give some friendly loan as he has run short of some money in transaction of business. It was further averred that the plaintiff in good faith and being a friend of deft. Nos. 1 and 2 consented to give money as required by deft No. 1. It was also stated that deft. No. 2 stood surety for refund of the said amount and stood guarantor on behalf of deft. No. 1. The plaintiff as such gave a friendly loan of Rs. 4.000.00 by cheque drawn on State Bank of India, Moti Nagar. It was further averred that the plaintiff also paid a sum of Rs. 6,000.00 vide cheque dt. 17.4.80. Thus the plaintiff gave a total loan of Rs. 10,000.00. Deft. No. 1 was sued as a principal debtor and deft. No. 2 was sued as a guarantor. It was further stated that inspire of notice of demand the amount has not been returned.

(4) On service of summons for judgment, the respondents applied for leave to defecd. The learned trial Court, in view of the defense raised by the respondents, took the view that the defense taken raises triable issue and granted leave to defend un-conditionally.

(5) Before 1 go into the question whether leave has been granted rightly or wrongly, it appears to me that the suit is not of the category contemplated by 0. 37 R(1) (2), CPC.

(6) Mr. Sharma, who appears for the petitioner, says that his case falls within clause (a) 0. 37 R. 1 (2), CPC...

(7) The arguments of learned counsel is that his suit is on the basis of cheques. The cheques' is certainly a bill of exchange. But this suit is not based on 'cheque' because there is no cheque in favor of the plaintiff. The suit is in fact based on loan transaction. When somebody files a suit on the basis of bill of exchange, hundies or promissory notes the documents are annexed with the plaint and are drawn in favor of the plaintiff or endorsed in his favor. Here the cheques on the

basis of which the suit is allegedly filed has already been honoured by the bankers of the plaintiff and were in favor of the defendant-respondents and the money was utilised by the defendants. Such a suit cannot be called a suit based upon a cheque.

(8) So if the suit itself is not upon a bill of exchange or hundi or promissory note, no question arises of the applicability of the aforesaid clause (a) of 0. 37 R. 1 (2), CPC. It is not the case of the plaintiff petitioner that bids case falls under claute (b) of 0. 37 R. I (2), CPC.

(9) In this view f the matter, there is no merit in the revision petition and the same is dismissed.