

**Ramalingam Vs. Basavalingam**

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**SooperKanoon Citation :** [sooperkanoon.com/777886](http://sooperkanoon.com/777886)

**Court :** Chennai

**Decided On :** Dec-19-1990

**Reported in :** AIR1991Mad274; (1991)IMLJ307

**Judge :** Srinivasan, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 37, Rule 3

**Appeal No. :** C.R.P. No. 3007 of 1990

**Appellant :** Ramalingam

**Respondent :** Basavalingam

**Advocate for Def. :** T.R. Rajagopalan, Adv.

**Advocate for Pet/Ap. :** K. Sampath, Adv.

**Judgement :**

ORDER

1. The order of the Court below imposing a condition of furnishing security for grant of leave to defend the suit is not sustainable. The learned Judge has overlook-ed the provisions or Order XXXVII of the Civil Procedure Code. He has obviously forgotten that the question to be decided for an application for leave to defend is whether there is a triable issue in the suit or whether the claim made by the defendant is a moonshine. The learned Judge without taking into account any

of the relevant circumstances has granted leave on condition that the petitioner should furnish security for the amount claimed in the suit on or before a particular date.

2. The order deserves to be set aside. Learned counsel for the respondent places reliance on the judgment of the Supreme Court in *Messrs. Machelee Engineering and Manufacturers v. Messrs. Basic Equipment Corporation*, : [1977]1SCR1060 . The Supreme Court set out the following principles to be followed while considering the grant of leave to defend (at p. 580 of AIR) :--

'(a) If the defendant satisfied 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 or 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 had 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 plaintiff's 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 the 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 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 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.'

3. Learned counsel for the respondent contends that this matter would fall under Clause (c), as according to her, the affidavit does not positively and immediately make it clear that the petitioner has got a defence in the suit. I do not agree with her. The affidavit filed in support of the application for leave to defend has set out the facts clearly on which reliance is placed by the petitioner. Paragraph 8 of the affidavit sets out the circumstances under which the promissory notes were obtained by the respondent herein. In paragraph 18 of the affidavit it is categorically asserted that the petitioner had not received any amount from the plaintiff under the suit promissory notes and the plaintiff never made any demand.

4. I am of opinion that the affidavit does disclose a triable issue and it does not leave the Court to make any guess work. The matter will fall under Clauses (a) and (b) of the principles extracted above from the judgment of the Supreme Court. The question has to be decided in the suit on the basis of the evidence as to whether the suit promissory notes are supported by any consideration.

5. In the circumstances the civil revision petition is allowed. The order of the Court below is set aside. The petitioner is granted leave to defend the suit O.S. 187 of 1988 on the file of the Sub-Court, Cuddalore, The petitioner is directed to file the written statement in the suit on or before 31-1-1991. The Subordinate Judge of Cuddalore is directed to dispose of the suit on or before 30-4-1991. There will be no order as to costs.

6. Petition allowed.