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Court : Chennai

Decided On : Jun-20-1977

Reported in : (1977)2MLJ479

Appellant : Baba Industries and anr.

Respondent : The Mehta Traders by Prop. D.R. Mehta

Judgement :

T. Ramaprasada Rao, J.

1. Mr. Habibullah Badsha, learned Counsel for the. appellants rightly contends that the order of the learned Judge in Application No. 2432 of 1974 wherein he imposed a condition while granting leave to defend, is assailable, because, it is against the accepted canons of judicial interpretation as found in the case-law.

2. In the instant case, the respondent was the plaintiff and the applicants appellants were the defendants, who sought for leave to defend an action brought by the respondent on the foot of a promissory note. The learned Master who went into the question, as well as Sethuraman, J., expressed the view what there is a prima facie defence available to the defendants and he agreed with the learned Master that leave to defend has to be granted in the instant case. Having granted such relief, he went into the question whether such leave should be conditional or unconditional. He exercised his discretion against the appellants and gave conditional leave subject to the defendants depositing one half of the suit amount

into Court. It is as against this, the appeal has been preferred.

3. As the case-law is abundant, and is also equally clear, we refer to the citation in the Tamil Nadu Law Notes Journal, to wit, *Mechalec Engineers and Manufacturers v. Basic Equipment Corporation* (1977) T.L.N.J. 4 (S.C.), wherein the Supreme Court accepted the basic principles which would guide the Court in the matter of grant of such leave to defend. One such principle contained in the ratio of the above decision is that if the Court is satisfied that the defence of the defendant is acceptable, though prima facie, and also if the defence raises a triable issue, thereby indicating that the defendant has a fair or bona fide or reasonable chance of success, or if the state of affairs is such that the Court is reasonably led to the conclusion that the trial of the action only can establish the truth, bona fides or otherwise of the defence raised, then, in such circumstances, the Court ought not to impose a condition in the matter of the payment of the plaint amount sought for by the plaintiff, into Court, as security, before the grant of such leave. This is deprecated by the Supreme Court by the observation that '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 payment into Court or furnishing security' (The italics is ours). The accent, therefore, is on the imposition of condition regarding the time within which the original suit laid by the plaintiff has to be disposed of or the manner or the method of such a trial. But the Supreme Court is emphatic that no condition as to payment into Court of any portion of the amount claimed, or furnishing of security, would arise in a case where a triable issues is found and a prima facie defence is disclosed. Following this decision, we accept the contention of learned Counsel for the appellants that the imposition of the condition by the learned Judge in the last paragraph of his judgment has to be removed.

4. Learned Counsel for the respondent, however, wanted to persuade, at this stage, that there is no triable issue at all in the instant case. But we are afraid that sitting at the second stage of hearing viz., as against the order of the Master and the learned Judge sitting in the original side, we are not inclined to take a different view, as both the Courts found that there is prima facie presentable defence available to the defendant.

5. We may add that the respondent is not prejudiced because he has already secured an order in his favour restraining the appellants from alienating or otherwise dealing with their properties worth about Rs. 75,000 the description of which is given in the relative affidavit or understanding filed by the second defendant in appropriate proceedings referred to by the learned Master in his order. We have noticed this also and taking all such circumstances into consideration, the original side appeal is allowed. There will be no order as to costs.

6. The suit is a very old one. The Supreme Court encourages giving a discretion to the trial Court to fix a time within which such trial should be concluded. Having regard to this, and because the suit is old, we direct that the trial of the suit be expedited and the same be disposed of by August, 1977.

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