

HIGH COURT OF DELHI

Bench: HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

Date of Decision: 05th January, 2024

CM(M) 2010/2023, CM APPL. 63240/2023, CM APPL. 63241/2023
& CM APPL. 63242/2023

PAWAN VERMA

..... Petitioner

VS

SARDAR MANMOHAN SINGH

..... Respondent

Section, Acts, Rules, and Article Mentioned in Judgment:

Article 227 of the Constitution of India

Order XXXVII Rule 3 (5) of the Code of Civil Procedure, 1908 (CPC)

Section 138 of the Negotiable Instruments Act, 1881 (Act of 1881)

Subject:

The subject of the judgment is a civil suit in which the defendant challenges the Trial Court's order granting conditional leave to defend. The defendant disputes financial transactions and the execution of a handwritten undertaking. The judgment discusses the defendant's conduct, the plaintiff's reliance on dishonored cheques and the undertaking, and the Trial Court's discretion to impose conditions for leave to defend.

Headnotes :

Civil Suit – Grant of conditional leave to defend – Defendant challenges the Trial Court's order granting conditional leave to defend – Defendant disputes financial transactions and execution of handwritten undertaking – Defendant failed to comply with the Trial Court's directions and delayed approaching the Court – Defendant's conduct indicates an intent to protract legal proceedings – Plaintiff relied on dishonored cheques and handwritten undertaking – Defendant's defense of issuing blank cheques without consideration is weak – Defendant's admission of signatures on the undertaking while disputing its contents – Trial Court's discretion to impose conditions for leave to defend – Interference with discretionary order under Article 227 requires a showing of patently erroneous exercise of discretion – Defendant failed to make a case for interference – Petition dismissed.

Referred Cases with Citations and Representing Advocates:

- IDBI Trusteeship Services Limited v. Hubtown Limited: [Para 13] (2017) 1 SCC 568
- B.L. Kashyap and Sons Limited. V. JMS Steels and Power Corporation and Another: [Para 8] (2022) 3 SCC 294
- Babbar Vision India Pvt. Ltd. V. Rama Vision Ltd.: [Para 8] 2002 SCC Online Del 766
- Garment Craft v. Prakash Chand Goel: [Para 18] (2019 SCC OnLine Del 11943)
- Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar: [Para 18] (2010) 1 SCC 217

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

CM APPL. 63240/2023 (for exemption)

Allowed, subject to just exceptions.

Accordingly, this application is disposed of.

CM(M) 2010/2023, CM APPL. 63241/2023 & CM APPL. 63242/2023

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 22.08.2023 passed by Additional District Judge-02, North, Rohini Court, Delhi in CS No. 370/2021, titled as **Sardar Manmohan Singh v. Pawan Cargo Carriers** ('Trial Court') whereby the Trial Court has granted conditional leave to defend to the Petitioner herein.
2. The Trial Court by its impugned order has allowed the Petitioner's application filed under Order XXXVII Rule 3 (5) of the Code of Civil Procedure, 1908 ('CPC') for leave to defend subject to the condition of deposit for an amount of Rs 10,00,000/- by way of an FDR in the name of the concerned Court.
 - 2.1. The Petitioner is the original defendant no. 2 and the Respondent is the original plaintiff before the Trial Court. Defendant no. 1 is the proprietorship firm of the Petitioner herein. The civil suit has been filed under Order XXXVII CPC seeking a recovery of Rs. 10,00,000/- along with pendent-lite and future interest.
 - 2.2. For the sake of convenience, the parties are being referred to as per their rank and status before the Trial Court.
3. Brief facts leading to filing of present petition are as under:
 - 3.1. The suit arises out of the claim of the plaintiff with respect to his financial transactions with defendant no. 2 for an amount of Rs. 22,00,000/-. It is stated in the plaint that as an acknowledgment of the financial dealings,

defendant no. 2 executed a handwritten undertaking dated 22.02.2019 and undertook to pay an amount of Rs. 22,00,000/-.

3.2. It is stated in the plaint that an amount of Rs. 12,00,000/- stands recovered by virtue of the property transfer transaction agreed between the parties; however, an amount of Rs. 10,00,000/- remains outstanding. It is stated that to repay the said outstanding amount; defendant no. 2 issued two (2) cheques for a sum of Rs. 5,00,000/- each in favour of the plaintiff. However, the said two (2) cheques were dishonoured on presentation. It is stated that the plaintiff has issued a legal demand notice under Section 138 of the Negotiable Instruments Act, 1881 ('Act of 1881') and initiated complaint proceedings being Criminal Complaint Case bearing no. 2092/2021 against defendant no. 2.

3.3. It is stated that since the amount of Rs. 10,00,000/- remains unpaid, the plaintiff, by way of the present suit filed under Order XXXVII CPC sought recovery of Rs. 10,00,000/- along with pendent-lite and future interest.

4. After receipt of summons for judgment, defendant no. 2 filed the application for leave to defend. In his defence, defendant no. 2 has denied having any financial transactions for an amount of Rs. 22,00,000/- with the plaintiff. He has denied executing any handwritten undertaking dated 22.02.2019 in favour of the plaintiff. Instead, he has averred that plaintiff (and his brother) obtained defendant's signatures on blank papers and two (2) blank cheques as a security for the commission payable to plaintiff (and his brother) from the sale of the commercial shop owned by the defendant no. 2. It is stated that the signatures on the blank papers and the cheques were made in good faith, however, the plaintiff has misused the same for filing the present suit.
5. The Trial Court after considering the defence of the defendant no. 2 and in view of the admission of the signatures on the cheques issued in favour of the plaintiff and applying the principles laid down by the Supreme Court in ***IDBI Trusteeship Services Limited v. Hubtown Limited***.¹ granted conditional leave to defend.

Arguments of the Petitioner i.e. defendant no.2

6. Learned counsel for the Petitioner i.e., defendant no. 2 states that the Trial Court erred in issuing a direction for deposit of an amount of Rs. 10,00,000/- through FDR while granting leave to defend. He states that the Trial Court has itself recorded that the plaintiff has failed to show the underlying financial transactions between the parties, which would form the basis of the alleged handwritten undertaking dated 22.02.2019. He states that the defendant no. 2 had signed blank documents and handed over to the

plaintiff in good faith; however, the alleged undertaking was not executed by the defendant no.2.

7. He states that there is no evidence on record that a sum of Rs. 22,00,000/- was advanced by the plaintiff to the defendant no.2. He states that the defendant no. 2 disputes execution of the alleged handwritten undertaking dated 22.02.2019 or issuance of the two (2) cheques in favour of the plaintiff for a sum of Rs. 10,00,000/-. He states that the signed cheques were blank when handed over to the plaintiff. He states that the defendant no. 2 has a good defence to the claim on merits and is therefore, entitled to unconditional leave to defend.

8. He relies upon the judgment of Supreme Court in **B.L. Kashyap and Sons Limited. v. JMS Steels and Power Corporation and Another**² and judgment passed by the Division Bench of this Court in **Babbar Vision India Pvt. Ltd. v. Rama Vision Ltd.**³

Findings of this Court

9. This Court has considered the submissions of the counsel for the Petitioner and perused the record.

10. At the outset, it is noted that the impugned order is dated 22.08.2023 and the present petition challenging the said order granting conditional leave

¹ (2017) 1 SCC 568 ² (2022) 3 SCC 294

to defend was first listed before this Court on 07.12.2023 (i.e., after four (4) months). The Trial Court by the impugned order directed the defendant no. 2 to deposit the amount of Rs. 10,00,000/- within one (1) month i.e., on or before 22.09.2023 along with the written statement. The said one (1) month expired on 30.10.2023. The defendant no.2 has without the leave of the Trial Court not complied with both these directions and has preferred this petition, which as noted above was first listed before this Court on 07.12.2023. A diligent litigant would have approached the Court within the time granted by the Trial Court. The intention of the Petitioner to delay the trial is therefore, writ large.

11. The aforesaid civil suit has been filed by the plaintiff relying upon the two (2) cheques for a total sum of Rs. 10,00,000/- issued by the defendant no. 2. The said cheques were dishonoured on presentation and therefore a Criminal Complaint Case bearing no 2092/2021 was also filed by the plaintiff under Section 138 of the Act of 1881. The concerned Court as well in the said criminal complaint case has observed that the defendant no. 2 has been deliberately avoiding service of the process of the court. The said Court was constrained to issue bailable warrants against the defendant no. 2 to secure

his presence and it was in consequence thereof, the defendant no. 2 entered appearance. This conduct of the defendant no. 2 further shows his intent to protract legal proceedings.

12. The plaintiff has filed his suit under Order XXXVII for recovery of Rs. 10,00,000/- and has relied upon the two (2) dishonoured cheques issued in its favour by the defendant no. 2 for maintaining the suit. The plaintiff has

³ 2002 SCC Online Del 766

also relied upon the handwritten undertaking dated 22.02.2019 executed between the parties acknowledging the financial transactions between them and the liability of the defendant no. 2 to repay an amount of Rs. 22,00,000/- and the mode of the repayment.

13. The defendant no.2 in his application seeking leave to defend has not disputed his signatures on the two (2) cheques for a sum total of Rs. 10,00,000/-, however, denied his liability by simplicitor alleging that blank cheques were issued. Section 118 of the Act of 1881 raises a presumption that every negotiable instrument is drawn for consideration. The presumption of consideration is therefore, in favour of the plaintiff. The defendant no. 2 will have to lead evidence to prove the said defence and rebut the presumption. The defence of issuing blank cheques without consideration is a weak defence which would require proof at trial and this defence cannot justify grant of unconditional leave.

14. The plaintiff has also relied upon the handwritten undertaking dated 22.02.2019 recording the acknowledgement of financial transactions between the parties whereunder the defendant no. 2 has admitted his liability to pay Rs. 22,00,000/-. The defendant no. 2 has set up a defence that he signed blank papers and handed over the same to the plaintiff; and he apprehends that the said blank papers have been misused for drawing up the undertaking. This defence set up by the defendant no. 2 is an admission of his signatures on the said undertaking. The defendant no. 2 is, therefore, in essence raising a dispute with respect to the contents of the said undertaking while admitting his signatures.

15. The explanation offered by defendant no. 2 that he signed blank cheques and blank papers to hand over to the plaintiff (and his brother) only in 'good faith' is opposed to common prudence. There is no presumption in favour of such an improbable defence. The circumstances pleaded for issuing the signed blank papers and signed blank cheques do not commend themselves to this Court. In fact, in the considered opinion of this Court, this

kind of defence would fall in the fourth category as identified by the Supreme Court in the judgment of ***B.L. Kashyap and Sons Limited. v. JMS Steels and Power Corporation*** (supra). The relevant paragraphs of the said judgment read as under:

*“17. It is at once clear that even though in the case of **IDBI Trusteeship, Mechelec Engineers’** case shall stand superseded in the wake of amendment of Rule 3 of Order XXXVII but, on the core theme, the principles remain the same that grant of leave to defend (with or without conditions) is the ordinary rule; and denial of leave to defend is an exception. Putting it in other words, generally, the prayer for leave to defend is to be denied in such cases where the defendant has practically no defence and is unable to give out even a semblance of triable issues before the Court.*

17.1. As noticed, if the defendant satisfies the Court that he has substantial defence, i.e., a defence which is likely to succeed, he is entitled to unconditional leave to defend. In the second eventuality, where the defendant raises triable issues indicating a fair or bonafide or reasonable defence, albeit not a positively good defence, he would be ordinarily entitled to unconditional leave to defend. In the third eventuality, where the defendant raises triable issues, but it remains doubtful if the defendant is raising the same in good faith or about genuineness of the issues, the Trial Court is expected to balance the requirements of expeditious disposal of commercial causes on one hand and of not shutting out triable issues by unduly severe orders on the other. Therefore, the Trial Court may impose conditions both as to time or mode of trial as well as payment into the Court or furnishing security. In the fourth eventuality, where the proposed defence appear to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also of payment into the Court or furnishing security or both, which may extend to the entire principal sum together with just and requisite interest.

17.2. Thus, it could be seen that in the case of substantial defence, the defendant is entitled to unconditional leave; and even in the case of a triable issue on a fair and reasonable defence, the defendant is ordinarily entitled to unconditional leave to defend. In case of doubts about the intent of the defendant or genuineness of the triable issues as also the probability of defence, the leave could yet be granted but while imposing conditions as to the time or mode of trial or payment or furnishing security. Thus, even in such cases of doubts or reservations, denial of leave to defend is not the rule; but appropriate conditions may be imposed while granting the leave. It is only in the case where the defendant is found to be having no substantial defence and/or raising no genuine triable issues coupled with the Court’s view that the defence is frivolous or vexatious that the leave to defend is to be refused and the plaintiff is entitled to judgment forthwith. Of course, in the case where any part of the amount claimed by the plaintiff is admitted by the defendant, leave to defend is not to be granted unless the amount so admitted is deposited by the defendant in the Court.

17.3. Therefore, while dealing with an application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the rule or that the leave to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be

a meritorious one. Even in the case of raising of triable issues, with the defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave. It gets perforce reiterated that even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated above could be imposed while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the defendant fails to show any genuine triable issue and the Court finds the defence to be frivolous or vexatious.”
(‘Emphasis Supplied’)

16. Notwithstanding the above, the Trial Court has balanced the interest of the parties including defendant no. 2 by granting him conditional leave to defend. The condition imposed by the Trial Court for a deposit of sum of Rs. 10,00,000/- in view of the admitted signatures on the two (2) cheques issued by the defendant no. 2 is just and reasonable.

17. The decision of the Trial Court on whether to impose, or not to impose conditions for grant of leave to defend is discretionary in nature. Interference with such discretionary order under Article 227 of the Constitution of India can only be made out if it can be shown that exercise of such discretion has been patently erroneous and has resulted in grave injustice. In the facts of this case, as noted above, the defendant no. 2 does not dispute his signatures on the cheques or the undertaking dated 22.02.2019, therefore, this Court does not find any cause to interfere with the impugned order dated 22.08.2023, especially within the narrow parameters of the confines of the jurisdiction vested in this Court by Article 227 of the constitution of India.

18. The limits of the scope of interference by the High Court under the Article 227 of the Constitution have been reiterated by the Supreme Court in **Garment Craft v. Prakash Chand Goel**¹ and more specifically paragraph 15 and 16 therein which read as under:

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [Prakash Chand Goel v. Garment Craft, 2019 SCC OnLine Del 11943] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar, (2010) 1 SCC 217 : (2010) 1 SCC (Civ) 69] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when

¹ (2022) 4 SCC 181

there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. *Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd. [(2001) 8 SCC 97] has observed : (SCC pp. 101-102, para 6)*

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

(Emphasis

Supplied) The defendant no. 2 has failed to make out a case for interference and in fact, as noted above the defendant no. 2 is protracting trial in the civil suit as well as in the criminal complaint proceedings filed under Section 138 of the Act of 1881.

19. This petition is completely devoid of merits and is accordingly dismissed in *limine*; with no order as to costs. 20. Pending applications as well stand disposed of.

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