

A MECHELEC ENGINEERS AND MANUFACTURERS

v.

M/S. BASIC EQUIPMENT CORPORATION

November 1, 1976

B [A. N. RAY, C.J., M. H. BEG AND JASWANT SINGH, JJ.]

Civil Procedure Code, S. 115—Jurisdiction of High Court to interfere with the Trial Court's discretionary order, when exercisable.

C The appellant issued the respondent a cheque which was dishonoured. The respondent alleged that the cheque was the consideration for goods supplied. The appellant admitted issuing the cheque but denied by privity of contract. The respondent filed a suit under order 37 C.P.C., and the appellant applied for the required leave to defend, which was granted by the trial Court unconditionally. On revision under section 115 C.P.C., the High Court held that triable issues arose for adjudication, but, it considered the defence to be dishonest. If allowed the revision petition and gave conditional leave to defend on the ground that the defences were not *bona fide*.

Allowing the appeal, the Court

D HELD : It is only in cases where the defence is patently dishonest or so unreasonable that it could not reasonably be expected to succeed that the exercise of discretion by the Trial Court to grant leave unconditionally may be questioned. In other cases, it is not fair to pronounce a categorical opinion on such a matter before the evidence of the parties is taken so that its effects could be examined. High Court's interference under sec. 115 C.P.C. with the correct exercise of its discretion by the trial Court was patently erroneous. [1062 E-H]

Santosh Kumar v. Bhai Mool Singh [1958] S.C.R. 1211 at 1215, *Jacobs v. Booth's Distillery Co.* [1901] 85 L.T. 262 followed.

E *Smt. Kiranmoyee Dassi and another v. Dr. J. Chatterjee* (49 C.W.N. 246 at 253) distinguished.

F *M. L. Sethi v. R. P. Kapur* [1973] (1) S.C.R. 697; *The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad & Anr. v. Ajit Prasad Tarway, Manager (Purchase and Stores), Hindustan Aeronautics Ltd. Balanagar, Hyderabad* (AIR 1973 SC 76); *D.L.F. Housing & Construction Co. Pvt. Ltd., New Delhi v. Sarup Singh & Ors.* [1970] 2 S.C.R. 368; and *Milkhiram (India) (P) Ltd. and Ors. v. Chamanlal Bros.* (AIR 1965 SC 1998) referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 508 of 1976.

(Appeal by Special Leave from the Judgment and Order dated 27-10-1975 of the Delhi High Court in Civil Revision No. 115/75).

S. N. Andley, Uma Dutta and T. C. Sharma, for the appellant.

G *K. C. Agarwala and M. M. L. Srivastava*, for the respondent.

The Judgment of the Court was delivered by

H **BEG. J.** The plaintiff-respondent alleged to be a registered partnership firm filed a suit on 25th April, 1974, through Smt. Pushpa Mittal, shown as one of its partners, for the recovery of Rs. 21,265.28 as principal and Rs. 7655/-, as interest at 12% per annum, according to law and Mercantile usage, on the strength of a cheque drawn by the defendant on 12th May, 1971, on the State Bank of India, which, on presentation, was dishonoured. The plaintiff alleged that the cheque

was given as price of goods supplied. The defendant-appellant firm admitted the issue of the cheque by its Managing partner, but, it denied any privity of contract with the plaintiff firm. The defendant-appellant had its own version as to the reasons and purposes for which the cheque was drawn.

The suit was instituted under the provisions of Order 37 Civil Procedure Code so that the defendant-appellant had to apply for leave under Order 37, Rule 2, of the Code to defend. This leave was granted unconditionally by the Trial Court after a perusal of the cases of the two sides. Order 37, Rule 3, Civil Procedure Code lays down :

“(1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit”.

A learned Judge of the High Court of Delhi had on a revision application under Section 115 Civil Procedure Code interfered with the order of the Additional District Judge of Delhi granting unconditional leave, after setting out not less than seven questions on which the parties were at issue. The learned Judge had, after discussing the cases of the two sides and holding that triable issues arose for adjudication, nevertheless, concluded that the defences were not *bona fide*. He, therefore, ordered :

“For these reasons I would allow the revision petition and set aside the order of the trial Court. Instead I would grant leave to the defendant on their paying into Court the amount of Rs. 21,265.28 together with interest at the rate of 6 per cent per annum from the date of suit till payment and costs of the suit (only court fee amount at this stage and not the lawyer's fee). The amount will be deposited within two months. There will be no order as to costs of this revision”.

The only question which arises before us in this appeal by special leave : Could the High Court interfere, in exercise of its powers under section 115, Civil Procedure Code, with the discretion of the Additional District Judge, in granting unconditional leave to defend to the defendant-appellant upon grounds which even a perusal of the order of the High Court shows to be reasonable ?

Santosh Kumar v. Bhai Mool Singh(¹), was a case where a cheque, the execution of which was admitted by the defendant, had been dishonoured. The defendant had set up his defences for refusal to pay.

(1) [1958] SCR 1211-1215.

A This Court noticed the case of *Jacobs v. Booth's Distillery Company*(¹), where it was held that, whenever a defence raises a really triable issue, leave must be given. Other cases too were noticed there to show that this leave must be given unconditionally where the defence could not be shown to be dishonest *in limine*. This Court observed there (at p. 1215) :

B "The learned Counsel for the plaintiff-respondent relied on *Gopala Rao v. Subba Rao* (AIR 1936 Mad. 246, *Manohar Lal v. Nanhe Mal* (AIR 1938 Lah. 548), and *Shib Karan Das v. Mohammed Sadiq* (AIR 1936 Lah. 584). All that we need say about them is that if the Court is of opinion that the defence is not *bona fide*, then it can impose conditions and is not tied down to refusing leave to defend.

C We agree with Varadachariar J. in the Madras case that the Court has this third course open to it in a suitable case. But, it cannot reach the conclusion that the defence is not *bona fide* arbitrarily. It is as much bound by judicial rules and judicial procedure in reaching a conclusion of this kind as in any other matter".

D On general principles, relating to the exercise of jurisdiction of High Courts under section 115, Civil Procedure Code, several cases were cited before us by Mr. Andley : *M. L. Sethi v. R. P. Kapur*(²); *The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad & Anr. v. Ajit Prasad Tarway, Manager, (Purchase & Stores), Hindustan Aeronautics Ltd., Balanagar, Hyderabad*(³); *D. L. F. Housing & Construction Co. Pvt. Ltd. New Delhi v. Sarup Singh & Ors.*(⁴); *Milkhiram (India) Pvt. Ltd. & Ors. v. Chamanlal Bros.*(⁵)

We need not dilate on the well established principles repeatedly laid down by this Court which govern jurisdiction of the High Courts under section 115 C.P.C. We think that these principles were ignored

F by the learned Judge of the High Court in interfering with the discretionary order after a very detailed discussion of the facts of the case by the learned Judge of the High Court who had differed on a pure question of fact—whether the defences could be honest and *bona fide*. Any decision on such a question, even before evidence has been led by the two sides, is generally hazardous. We do not think that it is fair to pronounce a categorical opinion on such a matter before

G the evidence of the parties is taken so that its effects could be examined. In the case before us, the defendant had denied, *inter alia*, liability to pay anything to the plaintiff for an alleged supply of goods. It is only in cases where the defence is patently dishonest or so unreasonable that it could not reasonably be expected to succeed that the exercise of discretion by the Trial Court to grant leave unconditionally may be

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(1) [1901] 85 L.T. 262.
(3) AIR 1973. SC 76.
(5) AIR 1965 SC 1698.

(2) [1973] 1 S.C.R. 697.
(4) [1970] (2) SCR 368.

questioned. In the judgment of the High Court we are unable to find, A
a ground of interference covered by Section 115 C.P.C.

In *Smt. Kiranmoyee Dassi & Anr. v. Dr. J. Chatterjee*⁽¹⁾, Das. J.,
after a comprehensive review of authorities on the subject, stated the
principles applicable to cases covered by order 17 C.P.C. in the form
of the following propositions (at p. 253) :

•• “(a) If the Defendant satisfies the Court that he has a
good defence to the claim on its merits the plaintiff is not en-
titled to leave to sign judgment and the Defendant is entitled
to unconditional leave to defend. B

• (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

(c) If the Defendant discloses such facts as may be
deemed sufficient to entitle him to defend, that is to say, al-
though the affidavit does not positively and immediately
make it clear that he has a defence, yet, shews 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 payment into Court or furnishing
security. D E

(d) If the Defendant has no defence or the defence set
up is illusory or sham or practically moonshine then ordi-
narily the Plaintiff is entitled to leave to sign judgment and
the Defendant is not entitled to leave to defend. F

(e) If the Defendant has no defence or the defence is
illusory or sham or practically moonshine then although ordi-
narily the Plaintiff is entitled to leave 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 other-
wise secured and give leave to the Defendant on such condi-
tion, and thereby show mercy to the Defendant by enabling
him to try to prove a defence”. G

The case before us certainly does not fall within the class (e) set
out above. It is only in that class of case that an imposition of the
condition to deposit an amount in Court before proceeding further is
justifiable. H

A Consequently, we set aside the judgment and order of the High Court and restore that of the Additional District Judge. The parties will bear their own costs.

M.R.

Appeal allowed.