

***THE HON'BLE SRI JUSTICE SUJOY PAUL**

+ CIVIL REVISION PETITION No.1094 OF 2024

% 14-06-2024

Samala Venu

...Petitioner

vs.

\$ Flycon Blocks Pvt. Limited and Another

... Respondents

!Counsel for the Petitioner: Sri Nirmal Kumar Pandey

^Counsel for Respondents: Sri D.Mahadava Rao

<Gist :

>Head Note :

? Cases referred

1. AIR 2007 (NOC) 470 (DEL.)
2. AIR 2001 RAJ. 67
3. AIR 2022 SC 785
4. (2021) 6 SCC 413
5. (2003) 2 SCC 111
6. (2017) 1 SCC 568

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

CIVIL REVISION PETITION No.1094 OF 2024

Between:

Samala Venu

...Petitioner

vs.

Flycon Blocks Pvt. Limited and Another

... Respondents

JUDGMENT PRONOUNCED ON: 14.06.2024

THE HON'BLE SRI JUSTICE SUJOY PAUL

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :

2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :

3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

SUJOY PAUL, J

THE HONOURABLE SRI JUSTICE SUJOY PAUL**CIVIL REVISION PETITION No.1094 OF 2024****ORDER:**

The petitioner herein filed a summary suit vide O.S.No.131 of 2023 before XXVII Additional Chief Judge, City Civil Court at Seunderabad (for short, Court below) under Order VII Rule 1 read with Section 26 of CPC for recovery of Rs.3,80,48,150/-. The respondents herein filed an application vide I.A.No.2413 of 2023 under Order XXXVII Rule 3(5) read with Section 151 of CPC seeking permission to defend the case unconditionally. After hearing both the parties, by impugned order dated 16.02.2024, the Court below allowed the said application and permitted the defendants to defend themselves unconditionally. Challenging the said order, this petition is filed under Article 227 of the Constitution.

2. The petitioner herein is the plaintiff and the respondents herein are the defendants in the said suit. For the sake of convenience, the parties hereinafter shall be referred to as they are arrayed in the said suit.

Brief Facts:

3. Draped in brevity, the relevant facts are that the plaintiff averred before the Court below that defendant No.2 had friendship with one Mr.Allamsetty Raghunath. Defendant No.2 is Shareholder and Director of defendant No.1, Flycon Block Private Limited. Defendant No.1 approached said Allamsetty Raghunath requesting for advancing loan for his business activity. A promise was made by defendant No.2 to Allamsetty Raghunath that loan amount being advanced by him from time to time would be cleared by defendant No.2 progressively. It is also averred in the plaint that the defendants agreed and assured to repay the hand loan amounts to said Allamsetty Raghunath along with interest @ 36% per annum i.e., 3% per month. The different amounts were paid by Allamsetty Raghunath to the defendants on different dates. In total, Rs.60,63,000/- were paid by Allamsetty Raghunath to the defendants between 25.01.2007 to 13.09.2008.

4. In the plaint, it is further stated that defendant No.2 has executed a demand promissory note on a Rs.100/- stamp paper on 24.04.2011 acknowledging that an amount of Rs.1,05,84,000/- was due to be paid by the defendants to

said Allamsetty Raghunath as on that date and they promised to clear the said amount on or before 24.05.2011. In addition, the defendants also issued five cheques drawn on Bank of India, Secunderabad Branch. The description of the said cheques was mentioned in para No.3 of the plaint. If interest is calculated between 13.09.2008 to 24.11.2011, the date when calculation was made, it carries an interest of Rs.1,81,880/-. It is urged that interest @ 3% per month was discussed and agreed being the contractual rate of interest which was required to be paid by the defendants to Allamsetty Raghunath.

5. It is further averred in the plaint that since the defendants allegedly did not honour their undertaking to repay the said amount on or before 24.05.2011, although Allamsetty Raghunath was unhappy, did not insist for payment due to his friendship and acquaintance with the defendants. Allamsetty Raghunath again discussed about modalities of payments with the defendants for which the defendants agreed to execute a demand promissory note dated 25.01.2018 and also agreed to pay the amount of Rs.2,53,16,550/-. The said amount is arrived at between Allamsetty Raghunath and the defendants after calculating

the interest @ 3% per month. This amount was also not paid in discharge of promissory note dated 25.01.2018. Another promissory note dated 18.01.2021 was executed for an amount of Rs.3,18,63,230/- by including the interest @ 3% per month. This promissory note was also not translated into reality and hence, yet another promissory note dated 09.01.2023 to repay the amount of Rs.3,62,29,350/- with same rate of interest was executed.

6. It is further averred in the plaint that the defendants failed to pay the amounts covered under the promissory note dated 09.01.2023. By calculating the interest, it is submitted that the defendants are bound to pay interest @ 3% per month on the principal amount till the date of realisation. Furthermore, it is urged that Allamsetty Raghunath has executed an 'assignment deed' assigning the aforesaid debt in his favour by way of said deed dated 14.11.2023 in favour of the plaintiff and the plaintiff, being the assignee of debt of Allamsetty Raghunath, is entitled to recover the aforesaid amount along with future interest from the defendants. The plaintiffs' sent a legal notice dated 15.11.2023 demanding the said amount, but it went in vain.

7. The plaintiffs filed the instant summary suit under the provisions of Order VII Rule 1 read with Section 26 of CPC. The bone of contention of the plaintiff in the plaint is that the defendants do not have any defence to defend the above suit relating to financial transaction based on promissory notes. If such defence is pleaded before the Court, the same will be only for the purpose of defending the suit without any merits.

8. The defendants entered appearance and filed I.A.No.2413 of 2023 under Order XXXVII Rule 3(5) read with Section 151 of CPC seeking permission to defend the case unconditionally. The parties were heard on this application, and by impugned order, the Court below allowed the same.

Contentions of the Petitioner/Plaintiff:

9. Learned counsel for the petitioner/plaintiff submits that the Court below has erred in allowing the application filed by the defendants. The defendants did not dispute the existence of their signatures on the promissory note and assignment deed. In absence thereof, there was no occasion for the Court below to grant the permission to the defendants to defend the case unconditionally. It is urged that the case was an open and shut one and the Court below should have decided it in a summary manner.

10. The next submission of learned counsel for the petitioner/plaintiff is based on Section 130 of the Transfer of Property Act, 1882, Section 20 of the Negotiable Instruments Act, 1881 and Section 25(3) of the Contract Act, 1872. By reading the relevant Sections, learned counsel for the petitioner submits that the law creates a presumption in favour of the petitioner/plaintiff and hence, the Court below was not justified in allowing the application of the defendants. In support of his contentions, he placed reliance on the judgment of the Delhi High Court in **Sh.Vipin Gupta Vs. Sh.Prem Singh**¹ and the judgment of Rajasthan High Court in **Sapna Saree Centre Vs. Bank of Rajasthan Ltd.**². Lastly, it is submitted that the Court below has not clearly pointed out any triable issue on the strength of which such permission to defend could have been granted. In a cursory manner, the Court below opined that the judgment cited by the petitioner/plaintiff are based on different facts, but what were those different facts and how those judgments are distinguishable is not spelt out in the impugned order. Thus, the impugned order be interfered with.

¹ AIR 2007 (NOC) 470 (DEL.)

² AIR 2001 RAJ. 67

Stand of the respondents/defendants:

11. Learned counsel for the respondents/defendants placed reliance on Order XVVII Rule 3(5) of CPC and urged that the language of aforesaid provision makes it clear that it is the prerogative of the Court to decide whether the permission to defend can be granted or not. In a case of this nature where the defendant has raised various objections in his affidavit before the Court below, the Court below was perfectly justified in passing the impugned order. The attention of this Court is drawn on various paragraphs of the affidavit dated 07.12.2023 filed before the Court below. It is submitted that the point involved in this case is no more *res integra* and the Apex Court in **B.L.Kashyap and Sons Ltd. Vs. JMS Steels and Power Corporation & Others**³ and **S.Natarajan Vs. Sama Dharman**⁴ has drawn the curtains on the issue.

FINDINGS:

12. Before dealing with rival contentions, it is apposite to reproduce Order XXXVII Rule 3(5) of CPC which reads as under:

“The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such

³ AIR 2022 SC 785

⁴ (2021) 6 SCC 413

summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.”

(Emphasis Supplied)

13. In nutshell, the case of the plaintiff is that said Allamsetty Raghunath has given money to the defendants on various occasions. As per plaint averments, the various sums of money given to the defendants by said Allamsetty Raghunath on different dates are as under:

- a. An amount of Rs.24,00,000/- on 25.01.2007.
- b. An amount of Rs.6,00,000/- on 07.03.2007.
- c. An amount of Rs.10,00,000/- on 10.03.2007.
- d. An amount of Rs.10,63,000/- on 31.09.2008.
- e. An amount of Rs.5,00,000/- on 08.09.2008.
- f. An amount of Rs.5,00,000/- on 13.09.2008.”

14. The defendants in their aforesaid affidavit took a categorical stand and urged that the suit documents were obtained by force. Hence, the said documents are not valid and cannot be enforced in law. A clear objection was taken that suit is barred by law and a time barred claim cannot be enforced. The alleged original claimant Allamsetty Raghunath

had not paid any amount and had no right to claim any amount, and therefore, assignor has no right to seek any remedy before the Court below. It is further averred that amounts were allegedly paid in the year 2007/2008 and no information is given as to what was the mode of payment. The alleged promissory note was obtained in the year 2011 promising to pay the interest. Some blank papers/documents were obtained by Allamsetty Raghunath which are now being used by the plaintiff to extort money.

15. A plain reading of the stand taken by the plaintiff and defendants, *prima facie*, shows that they are at loggerheads on the question of limitation, on the enforceability of the documents and whether the same were obtained under pressure, coercion, etc. In this backdrop, it is to be seen whether the Court below was justified in allowing the application permitting the defendants to defend themselves unconditionally.

16. As noticed above, learned counsel for the petitioner/plaintiff submits that in absence of existence of any triable issue, such a permission to defend should not have been granted to the defendants. The order of the Court below needs to be examined on this aspect.

17. A bare perusal of the order of the Court below shows that it was clearly recorded that the defendants have stated that suit claim cannot be accepted. A huge amount of Rs.4 crores is involved and the defendants are disputing the authenticity of notarised assignment deed made by the assignor Allamsetty Raghunath in favour of the plaintiff just before filing of the suit. The 'Demand Promissory Note' dated 24.04.2011 is invalid as it contains non-judicial stamp purchased a day after on 25.04.2011.

18. In para 14 of the impugned order, the Court below recorded that there are so many triable and contentious issues between the parties. In this background, if permission to the defendants to defend is not granted, the very object and purpose of Order XXXVII Rule 3(5) of CPC would be frustrated. Then, the Court below considered the judgments cited by the plaintiff in para 15. In para 16, it assigned certain reasons for not accepting the said judgments. Thus, it is not correct to contend that the Court below has not assigned any reason whatsoever for distinguishing the judgments cited by the petitioner/plaintiff.

19. It is noteworthy that in the case of **Sh.Vipin Gupta** (supra), the genuineness of the documents/cheques and

existence of signatures were not in dispute. However, in that case, there was no defence that the suit documents were obtained under pressure, coercion or threat. Interestingly, the objection relating to limitation was also absent in the case of **Sh.Vipin Gupta** (supra). Similarly, in the case of **Sapna Saree Centre** (supra), the sham and illusory defence was not accepted.

20. In the instant case, whether the defence is sham or illusory cannot be decided in a summary trial. This Court says so because it is trite that the question of limitation is a mixed question of fact and law {see **Shakti Bhog Food Industries Ltd. Vs. Central Bank of India (2020) 17 SCC 260**}. This question needs to be determined after recording evidence.

21. Apart from this, in the case of **Sapna Saree Centre** (supra), the Rajasthan High Court upheld the order of the trial Court declining leave to defend because in the peculiar facts of that case, the defendant therein had failed to set up any triable issue by raising plausible pleas in their application. This is equally settled that a singular different

fact may change the precedential value of a judgment (see **Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd.**⁵).

22. At the cost of repetition, in the instant case, whether the suit documents were obtained by Allamsetty Raghunath by pressure or not is a question of fact which needs to be determined during the course of trial apart from decision on the question of limitation. These are certainly triable issues which were taken note of by the trial Court.

23. *In* **IDBI Trusteeship Trusteeship Services Ltd. v. Hubtown Ltd.**⁶, the Apex Court held as follows :

“17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698], as follows:

17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.

17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.”

⁵ (2003) 2 SCC 111

⁶ (2017) 1 SCC 568

24. The Apex Court in the case of **B.L.Kashyap and Sons Ltd.** (supra) opined as under:

“17. It is at once clear that even though in the case of IDBI Trusteeship, this Court has observed that the principles stated in paragraph 8 of 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.”

(Emphasis Supplied)

25. This judgment in no uncertain terms makes it clear that grant of leave to defend with or without condition is the ordinary rule and denial of leave to defend is an exception. In view of ratio *decidendi* of the above judgment, it can be safely held that in a case of this nature where factual matrix are in serious dispute and question of limitation is to be determined, it cannot be said that there exists no triable issue before the Court below. Putting it differently, it cannot be said that defendants have practically no defence.

26. The scope of interference under Article 227 of the Constitution is limited. If impugned order suffers from any jurisdictional error, palpable procedural impropriety or manifest illegality, interference can be made. Another view is

possible is not a ground for interference {See **Shalini Shyam Shetty vs. Rajendra Shankar Patil (2010) 8 SCC 329**}. In exercise of power under Article 227 of the Constitution, this Court is not required to act as a bull in a China shop.

27. In the instant case, in the opinion of this Court, the Court below has taken a plausible view and the petitioner/plaintiff could not establish any ingredient on which interference can be made. Hence, interference is declined.

28. Accordingly, the petition is **dismissed**. There shall be no order as to costs. Miscellaneous applications pending, if any, shall stand closed.

SUJOY PAUL, J

Date: 14.06.2024

Note:

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B/o. TJMR