HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

TUESDAY ,THE EIGHTEENTH DAY OF JANUARY TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL REVISION PETITION NO: 1363 OF 2020

Petition under Article 227 of the Constitution of India, aggrieved by the Order dated. 12/11/2020 passed in I.A. No. 1562 of 2018 in O.S. No. 763 of 2018 on the file of the Court of the X Additional Chief Judge, City Civil Court, at Hyderabad.

Between:

Sailu Kante, S/o Kante Maisaiah, Aged about 66 years, Occ. Retired employee, R/o H.No. 8-3-228/1280/63, Yousufguda, Hyderabad - 500 045 Cell. plus 91 8712875176

...PETITIONER/RESPONDENT/PLAINTIFF

AND

C. Butcha Reddy, S/o Late C. Krishna Reddy, A./o H.No. 8-3-252, Near Raghava Vegetables, Yousufguda, Hyderabad - 500 045 Cell. plus 91 9441270558

...RESPONDENT/PETITIONER/DEFENDANT

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order passed by the Learned X Additional Chief Judge, City Civil Court, at Hyderabad, in I.A. No. 1562 of 2018 in O.S. No. 763 of 2018 dated 12-11-2020 till the disposal of this Civil Revision Petition, in the interest of justice.

Counsel for the Petitioner : SRI. VANKINA ALLU AND PARTNERS

Counsel for the Respondent: SRI. M V V BASWA RAJ

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY CRP No.1363 of 2020

ORDER:

This Civil Revision Petition is filed assailing the order dated 12.11.2020 in A No.1562 of 2018 in OS No.763 of 2018 on the file of the learned X Additional Chief Judge, City Civil Courts, Hyderabad.

- 2. The brief facts of the case are that the plaintiff has filed Summary Suit in OS No.763 of 2018 on the file of the learned X Junior Civil Judge, City Civil Courts, Hyderabad for recovery of suit claim of Rs.19.50,000/-. On receipt of summons in the summary suit, the defendant has filed an application under Order-37, Rule-3 read with Section 151 of the Civil Procedure Code (for short CPC) for granting leave to defend the case. The trial Court having considered that the defendant has good grounds to defend, permitted him to defend his case. Assailing the said orders, this Civil Revision Petition is filed by the plaintiff on the following grounds:
 - i) The impugned order is contrary to law and is in divergence of established procedure, erroneous and arbitrary.
 - ii) The Cour below did not appreciate the fact that the words of the Order-37 Rule 3 (5) CPC that "the defendant may, by an affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit", which

categorically requires that there should be sufficient facts
put forth by the defendant to allow him to defend the suit.
But the Court below has simply permitted the petitioner.

- Limited V. Hubtown Limited held that while granting leave to defend suit under Order-37, the Court shall observe certain principles and one such principle is if the Court is of the opinion that the case raises a triable issue, then leave to defend should ordinarily be granted unconditionally.
- iv) The question whether the defendants raise a triable issue or not has to be ascertained by the Court from pleadings before it and affidavits of the parties. The learned Judge has not gone into the reasons as to how the current suit does not meet the criteria mentioned in Order-37 CPC to be tried as a summary suit and also did not look into the merits of the counter and arguments by the petitioner and the respondent. Thus, the order impugned is unsustainable.
- 3. Heard learned counsel on both sides. Perused the material placed on record.
- 4. The plaintiff has filed summary suit under Order-37, Rules-1 and 2 CPC for recovery of suit claim alleging that towards discharge of his liability, the defendant issued cheques one after another.

^{1 (2017) 1} SCC 568

Finally, the cheque bearing No.944603 was issued for an amount of Rs.19,50,000/- and at the request of the defendant only, it was presented for collection, returned unpaid with an endorsement "funds insufficient". The plaintiff has got issued a notice and after complying the requirement of Section 138 of Negotiable Instruments Act, a case in CC No.206 of 20017 is filed on the file of the learned 24th Metropolitan Magistrate, Kukatpally. Later, it was made over to the Court of III Special Magistrate, Kukatpally and renumbered as CC No.748 of 200-7. Thus, the cheque dated 08.12.2016 was only issued in discharge of legally enforceable debt or law.

5. The impugned order was passed by the Court below at para-6 of the impugned order, as extracted below:

"6. Point:

The petitioner submits that he has good grounds to defend his case because the respondent/plaintiff filed case against him for recovery of money on false and frivolous ground. The arguments of the respondent/plaintiff that as the petitioner has not pleaded specific grounds for his defence has no such force in it to deny the prayer of the petitioner. Since the petitioner submitted that he has goods grounds, I intend to given an opportunity to the petitioner to defend.

6. The Hon'ble Supreme Court of India in *IDBI Trusteeship*Services Ltd.'s case (supra), in para 17 to 17.6, held as follows:

"17. Accordingly, the principles stated in para 8 of *Mechelec Engineers & Manufacturers v. basic Equipment Corporation* (1976) 4 3CC 687 will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of

four Judges in Milkhiram (India) (P) Ltd., Chamanlal Bros., AIR 1965 SC 1698, as follows:

- 17.1 If the defendant satisfies the court that he has a substantial defence, that is, defence that is likely to succeed, the plaintiff is not entitled to leave to sign a judgment, and the defendant 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.
- 17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe order as to deposit or security.
- 17.4 If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into the Court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.
- 17.5 If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious then leave to defend the suit shall be refused, and the plaintiff s entitled to judgment forthwith.
- 17.6 If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to

defend the suit. (even if triable issues attributed to be due is deposited by the defendant in court."

- 7. Reverting back to the facts of the present case, the plaintiff has filed the original suit for recovery of Rs.19,50,000/- based on cheque dated 08.12.2016. Since on presentation the said cheque was returned with the endorse nent 'funds insufficient', the plaintiff has also filed a criminal case against the defendants under section 138 of Negotiable Instruments Act, vide CC No.206 of 2017 before the 24th Metropolitan Magistrate, at Ki katpally and the same is still pending.
- 8. From the impugned order passed by the Court below, it shows that having hear I the arguments, relying on the submissions of the defendant that he has good goods for his defence, the Court below gave an opporturity to the petitioner to defend. The grounds are not disclosed either in the order impugned or in the affidavit filed in support of the application. The order impugned is clearly contrary to the principles laid by the Hon'ble Supreme Court in the above decision. In such facts and circumstances, I am inclined to remit the matter to the Court below with a direction to appreciate the facts and give a clear find ng as to the grounds on which the Court below is satisfied that the defendant has substantial defence or that he is likely to succeed and the plaintiff is not entitled to leave to signed judgment and the defendant is entitled to unconditional leave to defend the suit. Be it stated that the averments in the affidavit or the order impugned does not disclose that the defendant has a fair and reasonable defence.

Therefore, the trial Court is directed to dispose of the matter afresh by following the principles laid down by the Hon'ble Supreme Court in *IDBI Trusteeship Services Ltd.*'s case (1 supra).

9. In the result, the Civil Revision Petition is allowed. The order impugned dated 12.11.2020 in IA No.1562 of 2018 in OS No.763 of 2018 on the file of the learned X Additional Chief Judge, City Civil Court, Hyderabad, is hereby set aside and the matter is remanded to the trial Court for fresh disposal of IA No.1562 of 2018 following the principles laid in *IDBI Trusteeship Services Ltd.* 's case (1 supra). However, in the circumstances of the case, there shall be no order as to costs. Miscellaneous applications, if any pending in this revision petition shall stand closed.

SD/-P.PADMANABHA REDDY ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

- 1. The X Additional Chief Judge, City Civil Court, at Hyderabad.
- 2. The X Junior Civil Judge, City Civil Court, at Hyderabad.
- 3. One CC to SRI. VANKINA ALLU AND PARTNERS, Advocate [OPUC]
- 4. One CC to SRI. M V V BASWA RAJ, Advocate [OPUC]
- 5. Two CD Copies
- 6. One Spare Copy

CDL

TR A

HIGH COURT

DATED:18/01/2022

ORDER CRP.No.1363 of 2020



ALLOWING THE CRP

ATRI (7)
5/2/2022