State Bank Of Hyderabad vs Rabo Bank on 1 October, 2015

Equivalent citations: AIR 2015 SUPREME COURT 3820, 2015 (10) SCC 521, 2015 AIR SCW 6057, 2015 (6) AIR BOM R 451, 2016 (1) AJR 334, (2016) 130 REVDEC 472, (2015) 7 MAD LJ 370, (2016) 2 MAD LW 545, (2015) 4 CIVILCOURTC 696, (2016) 4 PAT LJR 473, (2015) 4 RECCIVR 968, (2016) 4 CAL HN 40, (2015) 3 DMC 270, (2015) 2 CIVILCOURTC 702, (2016) 1 MARRILJ 695, (2015) 2 RECCRIR 536, (2015) 3 ALLCRILR 140, (2015) 4 CRIMES 173, (2016) 2 MPLJ 544, (2015) 6 ANDHLD 140, (2016) 1 ICC 325, (2015) 2 WLC(SC)CVL 790, (2015) 4 CURCC 49, (2015) 155 ALLINDCAS 19 (SC), (2015) 3 ALL RENTCAS 526, (2015) 4 JLJR 247, (2015) 6 ALLMR 922 (SC), (2015) 113 ALL LR 752, (2015) 10 SCALE 308, (2015) 2 CLR 1003 (SC), 2016 (1) KLT SN 21 (SC), (2015) 6 BOM CR 517

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Bench: N.V. Ramana, Ranjan Gogoi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8194 OF 2015
ARISING OUT OF
SPECIAL LEAVE PETITION (CIVIL) NO. 33549 OF 2014

STATE BANK OF HYDERABAD … APPELLANT

VERSUS

RABO BANK … RESPONDENT

JUDGMENT

N.V. RAMANA, J.

Leave granted.

2. This appeal has been directed against the Judgment and Decree dated 9th October, 2014 passed by the Division Bench of the High Court of Judicature at Bombay in Appeal No. 415 of 2014 arising out of Summons for Judgment No. 238 of 2008 in Summary Suit No. 1586 of 2001. By the said

judgment, which is impugned herein, the Division Bench of the High Court dismissed the appeal preferred by the appellant/defendant thereby upholding the Judgment of the learned Single Judge.

3. In order to adjudicate the controversy between the parties, at the outset it is necessary to cull out the facts of the case to the extent of deciding the dispute before us.

4. The respondent/plaintiff is a banking institution located in Singapore and on behalf of its constituent namely M/S Gloland (Far East) Pte. Ltd., the respondent/plaintiff carried on business dealings with the appellant/defendant. The constituent of the respondent is engaged in the business of export of Chick Peas and it shipped a consignment to its Indian clients, namely, M/S Kothari Global Ltd. and M/S Marudhar Edible Oils Ltd., while handing over three sets of relevant documents dated 4.2.1998, 24.2.1998 and 13.7.1998 to the respondent/plaintiff for collecting the payment totaling US $ 8,19,199.35 from its Indian clients. The respondent/plaintiff in turn forwarded those documents to the appellant/defendant on the condition of releasing them to the Indian clients of its constituent against payment. It appears that the appellant/defendant did not receive payment from the clients of the respondent and hence did not release the documents to them.

5. While the things stood so, on 9th September, 1998 the respondent/plaintiff sent a fax message to the appellant Bank enquiring whether they would accept Bills of Exchange (Drafts) payable after 170 days, to which the appellant Bank conveyed its acceptance. Accordingly, the respondent sent four Bills of Exchange, all dated 9th September, 1998 in favour of the appellant Bank for an amount of US $ 8,19,198.75. Again on 21st September, 1998, the respondent sent another set of documents together with Bills of Exchange to the appellant Bank for the amount of US $ 11,12,428.54 for collection from the Indian clients of constituent of the respondent. The collection tenor was specified as 170 days after the date of Draft (Bill of Exchange). The respondent by a Telex message dated 23rd October, 1998 instructed the appellant Bank to deposit the payment against Bills of Exchange totaling US $ 19,31,627.89 into their New York Correspondent Bank viz., Bankers Trust Company on the due date of 27th February, 1999.

6. When the appellant Bank did not remit the amount even after the expiry of due date, the respondent/plaintiff on 9th March, 1999 sent a Telex message to the appellant/defendant to remit the proceeds along with interest @ 9.75% for the late payment. It appears that on the same day, the appellant Bank replied to the respondent denying its liability on the ground that the manner and mode in which the transactions took place was not in ordinary course of business and the acceptance given by its Kolkata Branch at Burra Bazar appears to be in total disregard to the prevailing procedure in Banks. It has also been informed to the respondent that the matter has been entrusted to the Central Bureau of Investigation (CBI). This was followed by various correspondences exchanged between the parties alleging and denying the liability till 31st March, 2001 on which date the respondent filed Summary Suit No. 1586 of 2001 before the High Court.

7. The learned Trial Judge fixed the liability on the appellant/defendant and made absolute the summons for judgment awarding interest @ 9.75% p.a. w.e.f. 27th February, 1999 i.e. the maturity date of Bills of Exchange, till realization of principal amount. Aggrieved thereby, the

defendant/appellant filed an intra-Court appeal before the High Court which came to be dismissed by the Division Bench upholding the order of the learned Single Judge. Not satisfied with the Judgment of the High Court, the appellant/defendant filed the appeal on hand by way of special leave. On 15th December, 2014, this Court while issuing notice, stayed operation of the impugned order of the High Court.

8. Mr. Mukul Rohtagi, learned Attorney General for India, arguing on behalf of the appellant Bank submitted that the Single Judge as well as the Division Bench of the High Court were not justified in fixing the liability upon the appellant Bank. In the absence of an opportunity to the appellant Bank to defend its case and file written statement in such a case where a huge amount of US $ 19,31,627.89 is involved, the decision of the High Court cannot be appreciated to be a correct one. While assailing the judgment of the High Court, learned Attorney General submitted that the respondent/plaintiff has no valid legal reason to institute the Suit under Order 37, CPC. The Suit does not qualify the test of Order 37 1(ii)(b)(i) as there was no specific averment with respect to a "written contract" and the averment so pleaded by the plaintiff/respondent is with respect to "an agreement". There was no consideration to the appellant Bank and merely the telex/fax messages do not constitute a written contract between the parties. The instruments in question (Bills of Exchange) did not bear the "acceptance" on behalf of the appellant Bank. The provisions of Negotiable Instruments Act mandate that the "acceptance" shall be given by the drawee/acceptor by signing his assent on the face of the Bill of Exchange. However, in the present case, no such endorsement of acceptance is present on behalf of the appellant Bank, nor any document was appended giving acceptance. Merely the telex/fax messages, purportedly issued on behalf of the appellant Bank, cannot give rise to the claim advanced by the plaintiff/respondent. In such a situation, the enforcement is clear violation of public policy envisaged under Section 23 of the Contract Act. The Head Office of the appellant-Bank has already instructed all its Branches to prohibit even co-acceptance of Bills or purchase/discounting of Bills accepted by other Banks, unless otherwise a specific written confirmation is made by the respective controlling office of the Bank. The telex/fax messages, on which the respondent has been relying on, were not issued with the authority of the appellant Bank. It was purely an act of mischief by certain persons representing the clients of the constituent of the respondent done with connivance of some officers of the appellant-Bank, and the High Court ought to have appreciated this fact. Learned Attorney General drawing our attention to an affidavit filed by the defendant/appellant seeking leave to defend the Summary Suit enumerating the factual aspects of the case, submitted that the learned Single Judge, ignoring the case of the defendant, decreed the Suit making Summons for Judgment absolute. The Division Bench of the High Court also committed a grave error in not appreciating the legal requirements in their true perspective and hence the judgments of the Courts below are liable to be set aside.

9. Learned senior counsel appearing for the respondent/plaintiff, on the other hand, supported the Judgment of the Courts below and submitted that the respondent/plaintiff has made the payment to the exporter M/S Gloland (Far East) Pte. Ltd. only after the representation of the appellant/defendant to accept the Bills of Exchange. The conduct of the appellant Bank in not fulfilling its obligation, on a bald allegation of fraud made by its officials acting beyond their authority, is not in the interest of justice. International banking activities operate on implicit faith

and trust between the parties and escaping from the responsibility showing a truncated reason of internal fraud, cannot be sustained. Even the reason of internal fraud as shown by the appellant Bank is not strongly based, because the tested telexes sent by the senior officials of the appellant Bank ensure their authenticity and leads to the presumption that the message was sent under the authority of the Bank. The appellant Bank, in fact, had obtained letters of indemnity on stamp paper duly signed by the authorized signatory of the Indian clients of the respondent's constituent, thereby indemnifying the appellant Bank in respect of co- acceptance for the tested telex messages. Learned senior counsel finally submitted that there is no error apparent in the judgments of the Courts below and the appeal deserves to be dismissed.

10. Having heard learned counsel for the parties, the short question that falls for our consideration is whether the Courts below were right in decreeing the Summary Suit without granting the relief of leave to defend to the defendant/appellant as envisaged under Order 37 Rule 3 C.P.C.?

11. We think that for the adjudication of the said question, it is appropriate first to examine the affidavit filed by the appellant Bank seeking leave to defend, after receiving Summons for Judgment. In the said affidavit, it is categorically mentioned that the Suit in question is not maintainable to be a Summary Suit as per law. Paras 5 to 8 of the affidavit filed by the Branch Manager and the Principal Officer of the Defendant/appellant, reads thus:

> 5) I say that the plaintiff has filed the present suit in March, 2001 praying for various reliefs as set out therein. The plaintiff thereafter preferred the Summons for Judgment in the same in the month of June, 2001 being the Summons for Judgment No. 1305 of 2001. I crave leave to refer to and rely upon the records and proceedings in respect to the said Summons for Judgment as and when produced.
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> 6) The plaintiff thereafter withdrew the said summons for judgment on 24th February, 2003 with the liberty. The plaintiff has failed in taking out the proceedings for amendment of the said summary suit. The plaintiff took out the Chamber Summons No. 576 of 2007 in April 2007, praying of the various amendments to the summary suit. Thus, the said Chamber Summons was taken out after a lapse of four years, when the plaintiff had preferred the summons for judgment in the said suit. This clearly shows that the plaintiff has failed and neglected in prosecuting his rights under the said suit and there is a deliberate delay on the part of the plaintiff in taking out the chamber summons for the amendment of the said plaint.
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> 7) I say that the present suit is not maintainable as a Summary Suit.

The present suit is filed by the plaintiff in respect to various Bills of Exchange alleged to have been accepted by the Defendant. I say that the drawee is required to sign his assent on the Bill of Exchange itself and not on any other part of the instrument/document as per the provisions of the Negotiable Instrument Act and as per the practice followed by Banks. Further, the alleged Bills/Suit documents including Bills are not admissible as they are not stamped as per the provisions of the Stamp Act. If the drawee puts his signature on any other paper than the Bill of Exchange, it would

not be construed as acceptance under the provisions of the Negotiable Instruments Act.

8) In the present case, admittedly the drawee has not affixed his signature, showing the co-acceptance of the Bills, on the Bills. Hence the alleged acceptance of the Bills of Exchange by the defendant as well as the drawee is not proper and the said Bills of Exchange cannot be said to be duly accepted by the defendant as well as the drawee.

12. Thus, the appellant/defendant by way of the aforementioned affidavit took the plea that the contract between the parties was not a concluded contract and the Suit in question is barred by limitation. Prior to the present Suit, the plaintiff/respondent had earlier in the year 2001 filed another Suit preferring Summons for Judgment, but withdrew the same in the year 2003. Only after taking out the Chamber Summons seeking various amendments after a lapse of four years in the year 2007 the plaintiff/respondent preferred the Summons for Judgment in the Suit in question, with an intention of deliberately delaying the process of law. Such a vast delay of about four years clearly indicates the negligence on the part of the plaintiff in prosecuting its rights and again initiating the proceedings after a lapse of four years time is clear abuse of law. Further plea taken by the defendant/appellant is that the Suit is not at all maintainable merely for the reason that there is no signature giving assent by the drawee on the face of Bills nor there the signature of the defendant giving co-acceptance. In addition, the stamping on the Bills was also not done as per the requirements of law. A clear stand has been taken by the defendant/appellant in the affidavit that the signature of the drawee giving assent should be affixed on the face of the Bill of Exchange itself under the provisions of the Negotiable Instrument Act and all Banks follow the same principle. Besides, the Bills are not stamped following the principles of Stamp Act.

13. We have further noticed in the affidavit that the defendant has levelled an allegation that drawer and drawee of the Bills had perpetrated fraud on the defendant with the collusion of some officials of the plaintiff Bank and the CBI inquiry on this issue is also pending. Pertinently, the Reserve Bank of India has also been informed on this matter reporting that a fraud had taken place. It is also important to note the strong allegation raised in the affidavit that besides the Suit being barred by limitation, the persons who signed the plaint were not authorized or empowered to file the Suit.

14. Another glaring aspect in the case is that the Division Bench of the High Court in its order categorically mentioned that the appellant/defendant has not actually endorsed its acceptance on the Bills of Exchange. In spite of recording such a finding, the High Court held that the appellant/defendant has agreed to pay the amount due even de hors the Bills of Exchange, which is sufficient to grant a decree in favour of the respondent/plaintiff.

15. As regards the entitlement of a defendant to the grant of leave to defend, the law is well settled long back in the year 1949 in Sm. Kiranmoyee Dassi Vs. Dr. J. Chatterjee, AIR 1949 Cal 479, in the form of the following propositions:

> If the defendant satisfies the Court that he has a good defence to the claim on its merits, the plaintiff is not entitled to leave to sign the judgment and the defendant is entitled to unconditional leave to defend.

> If the defendant raised 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.
>
> If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately made it clear that he has a defence, yet, shows such a stage 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.
>
> If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.
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> If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily 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 otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence.

16. It is also noticed that the law as enunciated above, has been followed by the Courts in several cases [See also : Santosh Kumar Vs. Bhai Mool Singh, AIR 1958 SC 321, Milkhiram (India) (P) Ltd. Vs. Chamanlal Bros, AIR 1965 SC 1698, Mechelec Engineers & Manufacturers Vs. Basic Equipment Corpn., (1976) 4 SCC 687 and Sunil Enterprises & Anr. Vs. SBI Commercial & International Bank Ltd. (1998) 5 SCC 354].

17. An analysis of the above principles makes it clear that in cases where the defendant has raised a triable issue or a reasonable defence, the defendant is entitled to unconditional leave to defend. Leave is granted to defend even in cases where the defendant upon disclosing a fact, though lacks the defence but makes a positive impression that at the trial the defence would be established to the plaintiff's claim. Only in the cases where the defence set up is illusory or sham or practically moonshine, the plaintiff is entitled to leave to sign judgment.

18. Insofar as the question of maintainability of the Suit in question under Order 37, CPC is concerned, this Court has in Neebha Kapoori Vs. Jayantilal Khandwala, 2008 (3) SCC 770 observed that where the applicability of Order 37 itself is in question, grant of leave to defend may be permissible. The Court before passing a decree is entitled to take into consideration the consequences therefor. The Courts dealing with summary trials should act very carefully taking note of the interests of both the parties. Merely on the ground that the defendant may resort to prolonged litigation by putting forth untenable and frivolous defences, grant of leave to defend cannot be declined. At the same time, the Court must ensure that the defendant raises a real issue and not a

sham one. The Court cannot reject the defence on the ground of implausibility or inconsistency. Before recording a finding of granting leave to defend, the Court should assess the facts and come to the conclusion that if the facts alleged by the defendant in the affidavit are established, there would be a good or even a plausible defence on those facts.

19. Although the affidavit does not positively and immediately make it clear that he had a defence, yet, it shows such a state of facts leading to the inference that at the trial of the action, the defendant 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 [See : T. Sukhender Reddy Vs. M. Surender Reddy, 1998 (3) ALD 659].

20. We are in total agreement with the view taken by this Court in Raj Duggal Vs. Ramesh Kumar Bansal, 1991 Suppl.(1) SCC 191 that leave to defend the Summons for Judgment shall always be granted to the defendant when there is a triable issue as to the meaning or correctness of the documents on which the claim is based or the alleged facts are of such nature which entitle the defendant to interrogate or cross-examine the plaintiff or his witnesses.

21. In the case on hand, we have perused the material on record including the FIR dated 9th August, 1999 registered by the CBI at the instance of Chief Vigilance Officer, SBH and also the Charge Sheet filed by the CBI. The charge sheet indicated the involvement of Mr. Sudhir Behra, Chief Manager of the appellant Bank at Burra Bazar Branch, Calcutta. Acting at the requests of representatives from the Indian clients of the respondent's constituent, the Chief Manager had induced some officers of the appellant Bank who were In-charge of Foreign Exchange Department to issue tested telex messages of co-acceptance. The charge sheet further alleges that these officers were not authorized to issue such co-acceptances and the motive behind their illegal and unauthorized action was to enable the constituent of the respondent to get their bills discounted by jeopardizing the interests of the appellant Bank. It is also on record that the trial of the said case was at the stage of evidence as on 13th November, 2014.

22. Apart from these, the substantial revelations of the defendant (appellant) in the affidavit coupled with the views expressed by the Division Bench of the High Court makes it clear that there are certain triable issues for adjudication and the defendant/appellant is entitled to defend the Suit. The appellate side of the High Court ought to have taken into consideration the factual matrix of the case before recording its finding. Taking into consideration the totality of the facts and circumstances of the case, we are of the opinion that the defendant/appellant has made out a prima facie case of triable issues in the Suit which needs to be adjudicated. Therefore, the defendant is entitled to grant of unconditional leave to defend the Suit.

23. Although certain other issues are raised by both the parties, in view of our finding that the defendant/appellant is entitled to leave to defend the Suit, we do not find it necessary to go into other issues at this stage. As regards the contention advanced on behalf of the respondent/plaintiff that the mere denial of liability by the appellant Bank saying that the Officer in charge of the Foreign Exchange Department of the appellant Bank was not authorized to give co-acceptance to the Bills

and thereby alleging a fraud by the officials cannot be sustained as those are the internal affairs of the defendant Bank for which the plaintiff/respondent cannot be penalized and the international trade practices and banking regulations have to be respected, this Court need not to go in detail in respect of these issues when we have come to an irresistible conclusion that the appellant/defendant is entitled to defend the Suit. Hence, we are reluctant to give findings on any of these issues which may adversely affect the trial of the Suit.

24. Accordingly, we allow the appeal by setting aside the judgment and decree passed by the Courts below. The appellant/defendant is granted unconditional leave to defend the Summons for Judgment in Summary Suit No. 1586 of 2001. The learned Single Judge of the High Court has to deal all the issues raised by the parties afresh and any observation made by this Court while dealing with this appeal should not be construed as an expression of this Court. There shall, however, be no order as to costs.

.....J. (RANJAN GOGOI) .....J. (N.V. RAMANA) New Delhi, October 1, 2015