
cannot claim compensation under both Acts and thus obtain compensation twice over".

(4) The learned counsel for the respondents was unable to support the order of the learned Commissioner. He, however, referred to section 2(c) of the Workmen's Compensation Act, 1923, wherein the term "compensation" has been defined. Reference was also made in section 5 thereof, which deals with the amount of compensation to be awarded under the Act. However, I do not find any relevancy of these provisions for deciding the controversy between the parties in this petition.

(5) For the reasons recorded above, this petition succeeds and the order of the Commissioner is hereby quashed. However, there will be no order as to costs.

S.C.K.

Before R. N. Mittal, J.

TALWAR SPINNERS and another,—Petitioners

versus

VEENA TANDON,—Respondent.

Civil Revision No. 2051 of 1979.

February 20, 1980.

Code of Civil Procedure (V of 1908)—Order 37 Rule 3 Clauses 5 and 6—Finding recorded by the trial Court that there are triable issues and the defence is substantial—Defendant allowed to defend the suit without imposition of terms—Later defence found not to be so—Imposition of terms—Whether permissible—Circumstances when conditions can be imposed—Stated.

Held, that it has been provided in clause 5 of Rule 3 of Order 37 of the Code of Civil Procedure, 1908, that leave to defend a suit shall be granted to the defendant unconditionally or upon such terms as may appear to the Court to be just. The intention of the Legislature thus, is clear that it wanted to give wider powers to the Courts regarding furnishing the securities while granting the defendant permission to defend. The principles governing the grant of permission to a defendant to defend a suit under Order 37 of the Code are three :

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firstly, that if the Judge is of the opinion that *bona fide* defences have been raised by the defendant which give rise to triable issues, then leave should ordinarily be granted; secondly, if the Judge has a genuine doubt as to whether defences are *bona fide* or genuine, in that situation he should impose conditions and thirdly, if the Judge is of the opinion that the defences are frivolous, sham or false, he should decline leave to defend altogether. The Court has indeed to exercise a judicious discretion while deciding a case. It should be careful in taking decisions so that genuine cases should not be shut out and in frivolous ones the defendants are not allowed to delay the matters by taking false defences. Imposition of conditions is really meant to discourage the defendant from raising false and frivolous pleas. It is, however, difficult to lay down any hard and fast rules as to in which circumstances the defendant should be allowed to defend on furnishing security and in what circumstances he should be allowed to do so without furnishing security. It in fact depends upon the facts and circumstances of each case which a Judge has to take into consideration while deciding the matter. He is also required to give briefly the pleas so that it must be known that he has applied his mind to arrive at that conclusion, and the High Court will be slow to interfere with the conclusions arrived at by the trial Court. Clause 6 of Rule 3 also makes it clear that if the Court has allowed the defendant to defend the case without putting him to terms it can do so for substantial reasons at a later stage. The Legislature incorporated this provision so that the Court if during the trial forms an opinion that the defence which appeared to be substantial when permission was granted to the defendant to defend the suit without security, is not so, it may be able to direct him to furnish security at that stage. This has been done so that the defendant by taking false pleas may not delay the proceedings and the Court may be able to do substantial justice. (Paras 5, 8 and 9).

Petition under section 115 C.P.C. of Act V of 1908 for revision of the order of Shri P. S. Ahluwalia, Senior Sub-Judge, Amritsar, dated 1st September, 1979, accepting the applications of the defendants and allowing to defend the suit, on conditions that they shall furnish a bank security for payment of the suit amount and costs of this suit, in case the suit is decreed against them, within a period of ten days from today and file their written statements on the next date. To come up on 12th September, 1979.

H. L. Sarin, Sr. Advocate with M. L. Sarin and R. L. Sarin, Advocates, for the Petitioner.

D. V. Sehgal, Advocate with P. S. Rana, Advocate, for the Respondent.

JUDGMENT

Rajendra Nath Mittal, J.

(1) This order will dispose of Civil Revisions Nos. 2051 to 2053, 2085 to 2087 of 1979. The short question in these civil revision petitions is that if a Court in a summary suit under Order 37, Code of

Civil Procedure, comes to a conclusion that the defendant has a substantial defence to raise and there are triable issues involved in the case, whether it can direct him to furnish security for payment of the amount in suit. The facts in the judgment are being given from Civil Revision Petition No. 2051 of 1979.

2. Briefly the facts are that the plaintiff instituted a suit for recovery of Rs. 19,200 on the basis of a pronote under Order 37 of the Code of Civil Procedure (hereinafter referred to as the Code), as amended by the Code of Civil Procedure (Amendment) Act, 1976 (hereinafter referred to as Amendment Act). After the service of the summons, the defendants filed an application under clause (5) of Rule 3 of the above-said order, for permission to defend the suit. They stated that they did not execute the pronote which was a forged one. They further stated that it was without consideration and not binding on them. The application was opposed by the plaintiff. The learned trial Court after hearing the parties came to the conclusion that the defendants had a substantial defence to raise and that there were triable issues involved in the case. Consequently, it granted leave to them to defend the case on the condition that they would furnish a bank security for payment of the amount and costs of the suit within a period of ten days. The defendants have come up in revision against that order to this Court.

3. Order 37 provides a summary procedure for suits upon bills of exchange, hundis, promissory notes and other suits wherein the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising on a written contract or on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty, or on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only. It has been done with a view to expeditious disposal of such suits. Rule 2 of the said order relates to the procedure for institution of summary suits, rule 3 to the procedure for the appearance of the defendant and rule 4 to the power to set aside decree. In order to determine the question it will be necessary to read relevant portions of Rule 3, before and after amendment of the Code by the Amendment Act, which are in the following terms:—

Rule 3 before the Amendment Act.

“3. (1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits

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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”.

Rule 3 after the Amendment Act:

“3. Procedure for the appearance of defendant—

- (1)

 (2)
 (3)

- (4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4-A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

- (5) 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 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.

(6) At the hearing of such summons for judgment:—

- (a) if the defendant has not applied for leave to defend or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or
- (b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(7)”

(4) The learned counsel for the petitioners-defendants has contended that the learned trial Court has come to a finding that the defendants have a substantial defence to raise and there are triable issues involved in the case. He urges that in the aforesaid situation, it was incumbent upon the Court to allow the petitioners to defend the suit without imposing conditions as to furnishing of any bank guarantee. According to the counsel, the permission granted to defend the case has become merely an illusory one in view of the rider that they should furnish bank security. He sought to support his argument from the observations in *Santosh Kumar v. Bhai Mool Singh* (1), *M/s Mechalec Engineers and Manufacturers v. M/s Basic Equipment Corporation* (2), *Smt. Shila Vati v. Vijay Kumar etc.* (3) and *Manjit Singh vs. Manohar Lal Peshawaria* (4). He also submits

(1) A.I.R. 1958 S.C. 321.

(2) A.I.R. 1977 S.C. 577.

(3) 1975 C.L.J. 633.

(4) 1977 R.L.R. 28.

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that there is no material amendment made in Rule 3 of Order 37 by the Amendment Act and the observations in the aforesaid cases hold good even after the amendment of the Code.

(5) I have given a due consideration to the argument of the learned counsel but regret my inability to accept it. The Code has been amended by the amendment Act whereby new provisions have been introduced in Rule 3. It is true that while interpreting the old Rule 3 of Order 37 of the Code, the Supreme Court held in *Santosh Kumar's case* (supra), that wherever the defence raises a triable issue, leave must be given and when that is the case, it must be given unconditionally, otherwise, the leave may be illusory. If the Court is of the opinion that the defence is not *bona fide*, then it can impose conditions and is not tied down to refusing leave to defend. 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. Where the defence is a good and valid one, conditions cannot be imposed. The power to impose conditions is only there to ensure that there be a speedy trial. If there is reason to believe that the defendant is trying to prolong the litigation and evade a speedy trial, then conditions can be imposed. It is further held that that conclusion cannot be reached simply because the defendant does not adduce his evidence even before he is told that he may defend the action. A similar matter came up before me in *Shrimati Shila Vati's case* (supra), wherein I followed the aforesaid view. The same view was taken by P. C. Jain, J., in *Manjit Singh's case* (supra). The Supreme Court reaffirmed the said view in *M/s. Mechalec Engineers' and Manufacturers' case* (supra). Beg, J. (as he then was) speaking for the Court approved the principles laid down by Calcutta High Court in (1945) 49 Cal. WN 246, which are as follows:—

- (1) If the defendant satisfied the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.
- (2) 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.

-
- (3) 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 make it clear that he has a defence, yet shows 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 plaintiffs 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 furnishing security.
 - (4) 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.
 - (5) 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”.

These pronouncements were made on the basis of Rule 3 as it existed prior to the Amendment Act. Now, the position has changed. Clause 1 of Old Rule 3, which provided that if the affidavit disclosed such facts which would make incumbent upon the plaintiff to prove consideration or some such other facts, which the Court deemed sufficient to support the application, it should grant the defendant leave to defend the suit, is no longer there. On the other hand, it has been provided in clause 5 that leave to defend a suit shall be granted to the defendant unconditionally or upon such terms as may appear to the Court to be just. From the above Rule the intention of the Legislature is clear that it wanted to give wider powers to the Court regarding furnishing the securities while granting the defendant permission to defend. No doubt it is true that similar language was used in clause 2 of Rule 3, before its amendment, but that clause was to be read subject to clause 1. As clause 1 is no longer there, therefore, the whole complexion of clause 2 stands changed.

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(6) The Legislature, it appears, while amending Rule 3, took into consideration an amendment of the Bombay High Court made in that Rule. The relevant amendment is comprised in clause 3 of the Rule, which is as follows:—

“(3) 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 summons for leave to defend such suit, leave to defend may be granted to him unconditionally or upon such terms as to the Court or Judge appear just”.

(7) From a perusal of the aforesaid clause, it is evident that its language is similar to that of clause 5 of Rule 3, after the amendment. That clause was interpreted by a Bench of the Supreme Court consisting of four Hon'ble Judges; after noticing *Santosh Kumar's case* (supra) in *Milki Ram (India) Private Ltd. and others v. Chamanlal Bros.* (5). Mudholkar, J., speaking for the Court observed thus:

“It is indeed not easy to say in many cases whether the defence is a genuine one or not and, therefore, it should be left to the discretion of the trial Judge who has experience of such matters both at the bar and the bench to form his own tentative conclusion about the quality or nature of the defence and determine the conditions upon which leave to defend may be granted. *If the Judge is of opinion that the case raises a triable issue, then leave should ordinarily be granted unconditionally. On the other hand, if he is of opinion that the defence raised is frivolous, or false, or sham, he should refuse leave to defend altogether. Unfortunately, however, the majority of cases cannot be dealt with in a clear cut way like this and the Judge may entertain a genuine doubt on the question as to whether the defence is genuine or sham or in other words whether it raises a triable issue or not. It is to meet such cases that the amendment to O. 37, R. 2 made by the Bombay High Court contemplates that even in cases where an apparently triable issue is raised the Judge may*

impose conditions in granting leave to defend. Thus this is a matter in the discretion of the trial Judge and in dealing with it, he ought to exercise his discretion judiciously. Care must be taken to see that the object of the rule to assist the expeditious disposal of commercial causes to which the order applies, is not defeated. Care must also be taken to see that real and genuine triable issues are not shut out by unduly severe orders as to deposit. In a matter of this kind, it would be undesirable and inexpedient to lay down any rule of general application”.

(8) The learned Judge in the above para has made a reference to amendments in Order 37, Rule 2, but it appears from the context that a reference has been made by him to amendments in Order 37 Rule 3. Three principles are deducible from the above observations; firstly that if the Judge is of the opinion that *bona fide* defences have been raised by the defendant, which give rise to triable issues, then leave should ordinarily be granted; secondly that if the Judge has a genuine, doubt as to whether the defences are *bona fide* or genuine, in that situation he should impose conditions and thirdly if the Judge is of the opinion that the defences are frivolous, sham or false, he should decline leave to defend altogether. The Court has to exercise a judicious discretion while deciding the case. It should be careful in taking the decisions so that the genuine cases should not be shut out and in frivolous ones the defendants are not allowed to delay the matters by taking false defences. Imposition of conditions is meant to discourage the defendant from raising false and frivolous pleas. It is, however, difficult to lay down any hard and fast rules as to in which circumstances the defendant should be allowed to defend on furnishing security and in what circumstances he should be allowed to do so without furnishing security. It depends on facts and circumstances of each case which a Judge has to take into consideration, while deciding the matter. He is also required to give briefly the pleas so that it may be known that he has applied his mind to arrive at that conclusion. This Court will be slow to interfere with the conclusions arrived at by the trial Court. In the abovesaid view I get support from a Division Bench decision of the Bombay High Court in *Bombay Enamel Works, a firm v. Purshottam S. Somaiya* (6).

(6) A.I.R. 1975 Bombay 128.

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(9) It will also be relevant to notice clause (6) of Rule 3. It is clear from its reading that if the Court has allowed the defendant to defend the case without putting him to terms it can do so for substantial reasons at a later stage. The Legislature incorporated the provision so that the Court if during the trial forms an opinion, that the defence which appeared to be substantial when permission was granted to the defendant to defend the suit without security, is not so, may be able to direct him to furnish security at that stage. This has been done, so that the defendant by taking false pleas may not delay the proceedings and the Court may be able to do substantial justice.

(10) In the present case I have gone through the orders very carefully. No doubt the Court has observed that the defendants have substantial defence to raise and there are triable issues in the case but it has not said that the defence is genuine and *bona fide* or sham. It was necessary to go into this matter before ordering to furnish security. It will, therefore, be proper that the cases may be remanded to the Court, to decide the question afresh, after taking into consideration the observations made above.

(11) For the aforesaid reasons, I accept the revision petitions, set aside the order of the Court below and remand the cases to the trial Court to decide the matter afresh after taking into consideration the observations made above. The parties are directed to appear in the trial Court on 17th March, 1980.

No costs.

N. K. S.

Before M. M. Punchhi, J.

GURCHARAN KAUR ALIAS CHARNO,—Appellant.

versus

SHER SINGH,—Respondent.

First Appeal from Order No. 181-M of 1979.

February 23, 1980.

Hindu Marriage Act (XXV of 1955)—Section 25—Marriage between the spouses annulled on the ground of impotency of the wife—Such wife—Whether entitled to alimony under section 25—Marriage not consummated—Such marriage—Whether void.