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REVISIONAL CIVIL

Before Khosla, J.

S. AMRIK SINGH,—*Defendant-Petitioner*

versus

S. JAGJIT SINGH (Plaintiff) and S. GURBAKHSH SINGH (Defendant),—*Respondents*

1953

April, 29th

Civil Revision No. 345 of 1952.

Code of Civil Procedure (Act V of 1908)—Section 115 and Order XXXVII, Rule 2—Permission to defend given conditionally—Revision against the order—Whether competent—Discretion to impose condition—Whether vested in the trial Court—Exercise of such discretion—Manner of—Interpretation of Statutes—Rule stated.

A suit was filed on the basis of a negotiable instrument under Order XXXVII of the Code of Civil Procedure in which an application was made by the defendants praying for permission to defend the suit. Permission was granted on condition that the defendants deposit the amount claimed or furnish security within a period of one month. The defendants moved the High Court in revision with a prayer that the condition imposed by the trial Court should be abrogated. A preliminary objection was taken that the revision petition was not competent.

Held, that the revision petition against such an order does not lie because it seeks to challenge the exercise of discretion vested by law in the trial Court. It is well-settled law that if discretion given to a Court is exercised wrongly, no revision petition lies to the High Court.

Held further, that the trial Court has a discretion given to it by law whether to impose conditions or not while giving permission to defend. This discretion must be exercised in a judicial manner and it cannot be said categorically that the hands of the court are tied and that only in those cases can conditions be imposed where the defence seems to be a sham one. The wording of Order XXXVII is not susceptible of such interpretation and it cannot be held that this wording means that the court has no discretion.

Held also, that in interpreting statutes the plain meaning of the words must be given full effect to.

Petition under section 115 of Act V of 1908 for revision of the order of Shri Sultan Singh, Senior Sub-Judge, Delhi, dated the 13th October 1952, granting leave to the defendant to defend the suit on the condition that he furnishes security to the satisfaction of the Court for the due performance of the decree that may ultimately be passed against him.

A. N. GROVER, for Petitioner.

GURBACHAN SINGH and J. L. BHATIA, for Respondents.

JUDGMENT.

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KHOSLA, J. These four revision petitions have arisen out of two suits on the basis of negotiable instruments. The four revision petitions constitute a set of cross revision petitions in the two suits. An application was made by the defendants in the two suits under Order XXXVII, Civil Procedure Code, praying for permission to defend the suits. Permission was granted on condition that the defendants deposit the amounts claimed or furnish security within a period of one month. The defendants have moved this Court on the revision side, and the prayer in their revision petitions is that the condition imposed by the trial Court should be abrogated. On the other hand the plaintiffs have also filed revision petitions in which the prayer is that the permission to defend the suits should not be granted in the circumstances.

A preliminary objection was taken to the two revision petitions filed by the defendants on the ground that no revision petition lay to this Court against an order of this type. Reliance was placed on a decision of the Lahore High Court in *Lala Manohar Lal* v. *Karobar Khandan Mushtarka Ahle Hanud Mausuma Nanhe Mal Sanwal Das* (1), in which this point was directly considered by Addison and Abdul Rashid, JJ. The learned Judges took the view that an order passed by a Court

(1) A.I.R. 1938 Lah. 548

under Order XXXVII, Rule 3, giving leave to defend conditionally is an interlocutory order and does not amount to "a case decided" within the purview of section 115, so as to be open to revision. The learned Judges, however, went further than holding that this was not "a case decided" and their decision was based on the additional consideration that even if this order were assumed not to be an interlocutory order the appellate Court would not interfere sitting on the revision side, because the trial Court cannot be said in the circumstances to have acted illegally or with material irregularity in the exercise of its discretion. Upon these two grounds the learned Judges held that no revision petition lay against an order granting leave to defend a suit under Order XXXVII, Civil Procedure Code, upon certain conditions. This is the only ruling which is directly in point, and Mr. Grover, who appeared on behalf of the petitioners, argued that this decision was based on an earlier decision which interpreted the provisions of section 115, Civil Procedure Code, and that that ruling had since been dissented from in a subsequent Full Bench decision of the Lahore High Court. But the point considered in those two cases was what was "a case decided", and as I have indicated above the *ratio decidendi of Lala Manohar Lal* v. *Karobar Khandan Mushtarka Ahle Hanud Mausuma Nanhe Mal Sanwal Das* (1), was twofold, namely, that the order of the trial Court did not amount "to a case decided" and also that the revisional Court could not interfere because the trial Court had full jurisdiction to exercise its discretion and even the wrong exercise of discretionary power could not be questioned by a revisional Court.

There are two other cases which are in point. The matter came up before the Punjab High Court in *Mr. S. S. Bazaz* v. *L. Ishwar Das Wadhwa* (2), and in this case a Division Bench took the view that leave to defend a suit under Order XXXVII, Civil Procedure Code, must be granted if the defence raises triable issues. In that case the learned Judges took the view that the defence

(1) A.I.R. 1938 Lah. 548
(2) 1950 P.L.R. 207

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raised did contain triable issues and the learned Judges granted leave to defend but upon condition that the defendants furnish security within a period of two months. In another case, which came up before myself and Harnam Singh, J., *The Jawala Bank, Ltd., Agra and another* v. *Ch. Habib Ahmad* (1), I expressed the same view. The following observation appears towards the end of this judgment :—

> "Indeed some Courts have taken the view that where the defence set up entitled the defendant to succeed the Court has no discretion and must grant leave unconditionally. I would perhaps not go so far, but it seems to me clear that where the defendant makes allegations which if proved by evidence would be sufficient to defeat the plaintiff's claim, leave must be granted to him, whether unconditionally or upon conditions. It will depend in any particular case whether any conditions should be imposed and if so what conditions. If the Court feels that the defendant has a good case and the defence is a *bona fide* one leave may be given unconditionally. If on the other hand the defendant's case as revealed in the affidavit filed by him is not a very good one and there are doubts about his *bona fides* leave may be given subject to conditions, * * * * *".

Mr. Grover has argued that the question of *bona fides* really does not enter into the matter and that while deciding whether leave should be granted or not the only point which the Court must consider is whether there are triable issues or not, and if the defence raised is a plausible one and not what is usually called sham, the Court must give unconditional leave. In support of this argument Mr. Grover cited *K. R. Kesavan* v. *The South Indian Bank, Ltd.* (2). This was a somewhat

(1) 1952 P.L.R. 348
(2) A.I.R. 1950 Mad. 226

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peculiar case. The trial Court took the view that the defence was not *bona fide* and upon that ground granted leave conditionally. The matter went up in appeal to a Division Bench of the Madras High Court, and the learned Judge who delivered the judgment discussed the question of *bona fides* at great length, but in the end came to the conclusion that the defence raised by the defendant in that particular case had raised no real issues so as to entitle him to unconditional leave to defend. The learned Judges laid down the criterion that the defence must be sham and not merely *mala fide*. In coming to this conclusion the English law on the subject was referred to and followed. Order 14 of the Annual Practice followed by the British Courts is very much in the same terms as Order XXXVII, but it seems to me that this Madras case is not an authority for the view that the question of *bona fides* does not enter into the matter at all, for we find that this discussion went beyond the point which the learned Judges were called upon to decide. The decision in fact was that in that particular case the defence did not raise any triable issues and the decision of the trial Court was affirmed. I am more inclined to follow the views expressed by the two Division Benches of this Court. Indeed in so far as these two decisions apply to the present case I am bound to follow them, and it seems to me that the trial Court has a discretion given to it by law whether to impose conditions or not. This discretion must be exercised in a judicial manner, but I do not think it can be said categorically that the hands of the Court are tied and that only in those cases can conditions be imposed where the defence seems to be a sham one. The wording of Order XXXVII, is not susceptible of such interpretation and in interpreting statutes the plain meaning of the words must be given full effect to. I find no ambiguity in the wording and I cannot hold that this wording means that the Court has no discretion. It is quite another matter to say that in law or in practice the Courts must exercise their jurisdiction in a certain manner and that where the defence is a sham one ordinarily conditions may be imposed, but that where the defence is not a sham

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one but may be a *mala fide* one, unconditional sanction must be given. This, however, does not mean that the discretion of the Court has been taken away. It is merely a direction given by the Courts as to the manner in which such discretion must be exercised, and it is well-settled law that if discretion given to a Court is exercised wrongly then no revision petition would lie to the High Court. In this case I find that the trial Court came to the conclusion that although the defence contained in the written statement of the defendant did raise triable issues, there were grave doubts regarding his (defendant's) *bona fides*, that is about the *bona fides* of his pleas. The learned Judge went on to discuss the various defences urged and with regard to one of these defences, namely, the question of jurisdiction, the trial Judge observed:—

> "The question of jurisdiction also has *prima facie* no force".

Concluding the learned Judge observed:—

> "For the foregoing reasons, I am of the opinion that although the defendant has raised triable issues in the case yet on the whole I feel grave doubts about the *bona fides* of his defence and so following the principle enunciated in *The Jawala Bank Ltd.*, v. *Ch. Habib Ahmad* (1), I grant leave to the defendant to appear and to defend the suit on the condition that he furnishes security * * * *".

In deciding the matter before me I have not to consider whether the learned trial Judge exercised his discretion wrongly. It may be that when this matter comes up in appeal the view taken by this Court will be that the defendant should have been allowed unconditional leave to defend the suit, but sitting on the revision side the question primarily is whether a revision petition is competent at all. This is a much narrower issue, and on this point I have no doubt at all that

(1) (1952) 54 P.L.R. 348

the petition does not lie because it seeks to challenge the exercise of discretion vested by law in the trial Court. The revision petitions of the two defendants, therefore, must fail. I may observe here that the conditional leave given in the other suit was given in somewhat similar, though not identical, circumstances, and in that case the learned Judge took the view that it could not be said that the defence raised would make out a good case for the defendant. In this case too, therefore, it was purely a matter of the exercise of discretion given to the Court by law.

These two petitions must, therefore, be dismissed, but in the circumstances of the case I make no order as to costs. The defendants will be allowed one month's time (as ordered by the trial Court) with effect from today to furnish security for the amount claimed.

In the two cross-revision petitions the prayer is that the leave should not be granted. I have already discussed the matter above and since the view taken is that the defences do raise triable issues, these revision petitions must also fail and are dismissed. The parties are directed to appear before the trial Court on the 21st of May, 1953.

APPELLATE CIVIL

Before Falshaw and Kapur, JJ.

1953

May, 21st

MESSRS WATKINS MAYOR AND COMPANY, JULLUNDUR CITY,—*Defendant-Appellant*

versus

THE JULLUNDUR ELECTRIC SUPPLY COMPANY, LIMITED, OF JULLUNDUR, THROUGH CHAIRMAN OF THE COMPANY,—*Plaintiff-Respondent*

Regular Second Appeal No. 787 of 1948.

Indian Electricity Act (IX of 1910)—Sections 22 and 23—Levy of minimum charge—Whether legal—Minimum charge—Object of—Practice—Plea not taken but evidence recorded—Whether such evidence can be looked into.

On the 4th May 1940, defendants entered into an agreement with the plaintiff, an Electric Supply Company, whereby they guaranteed a minimum consumption of 120,000 units in two years at the rate of Re 0-1-3 per unit.