

M/S. V.K. ENTERPRISES AND ANR.

v.

M/S. SHIVA STEELS

(Special Leave Petition (C) No. 25144 of 2009)

AUGUST 04, 2010

[ALTAMAS KABIR AND A.K. PATNAIK, JJ.]

Code of Civil Procedure, 1908: O.37 – Object – Leave to defend – Grant of – Suit by respondent under O.37, r.1 and 2 for recovery of cheque amount alleging that cheque issued by petitioner in 2006 was dishonoured – Application filed by petitioner u/ O.37, r.3, for leave to defend on the ground that the cheque was issued in 2000 and the matter was settled between the parties and that the year “2006” was interpolated in the cheque and presented in bank with dishonest intention – Dismissal of application by trial court as also by High Court – Interference with – Held: Not called for – There was no sign of interpolation – Allegation of attempt to erase any of the writings or figures on the cheque was without any foundation – Ledger book produced by respondent proved that transaction in respect of which the cheque in question was issued by the petitioner was settled – Defence raised by the petitioner did not make out any viable issue and courts below dealt with the matter correctly – Summary procedure – Constitution of India, 1950 – Article 136.

A suit was filed by the respondent under Order 37 Rule 1 and 2, CPC against the petitioner for recovery of money. The allegation in the suit was that the petitioner had purchased iron sheets on credit from the respondent and a sum of Rs.4.42 lacs became due and payable by petitioner to the respondent. A cheque was issued on 11.10.2006 by the petitioner but on presentation by respondent, the cheque was dishonoured. The petitioner entered appearance in the suit and filed an application

A under Order 37 Rule 3, CPC for seeking leave to defend. In the said application, the petitioner contended that a cheque was issued on 11th October, 2000, but the date of the cheque was, thereafter, interpolated and altered from 11.10.2000 to 11.10.2006, and presented to the bank
B by the respondent. It was also stated therein that apart from the signature on the face of the cheque and the date mentioned therein, the rest of the cheque was blank and an attempt was made by the respondent to misuse the same with the intention of withdrawing or
C misappropriating the amount, subsequently inserted in the cheque. It was ultimately stated in the application that the respondent had concocted the story and the bills placed on record by the respondent were also forged as the petitioner had neither purchased any material nor
D counter-signed the last 4 bills as per the details provided. The trial Court dismissed the application for leave to defend. High Court upheld the order of trial court. The order of High Court was challenged in the instant special leave petition.

E Dismissing the special leave petition, the Court

HELD: Order 37 was included in the Code of Civil Procedure in order to allow a person, who has a clear and undisputed claim in respect of any monetary dues, to recover the dues quickly by a summary procedure
F instead of taking the long route of a regular suit. The Courts have consistently held that if the affidavit filed by the defendant discloses a triable issue that is at least plausible, leave should be granted, but when the defence
G raised, appears to be moonshine and sham, unconditional leave to defend cannot be granted. What is required to be examined for grant of leave is whether the defence taken in the application under Order 37 Rule 3 C.P.C. makes out a case, which if established, would

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be a plausible defence in a regular suit. In matters relating to dishonour of cheques, the said principle becomes more relevant as the cheques are issued normally for liquidation of dues which are admitted. An examination of the photocopy of the cheque shows that the allegations made in the application filed by the petitioner under Order 37, Rule 3 C.P.C. were without any foundation. There was no sign of any interpolation having been made on the cheque and in particular, the date thereof where the figure '10' in Roman numerals was not even inserted. There were no signs of attempt to erase any of the writings or figures on the cheque to support the allegations made on behalf of the petitioner. The defence would have been plausible if there had been some substance in the allegations relating to the interpolation of the cheque, and the ledger accounts relating to the dues, demonstrated that such dues had been settled between the parties. Further, the issuance of the cheque was never disputed on behalf of the petitioner whose case was that the same was given on account of security and not for presentation, and an attempt was made to misuse the same by dishonest means. Against such cogent evidence produced by the respondent, there was only an oral denial which was not supported by any corroborative evidence from the side of the petitioner. On the other hand, the ledger book maintained by the respondent and settled by the petitioner was produced on behalf of the respondent in order to prove the transactions in respect of which the cheque in question was issued by the petitioner. The defence raised by the petitioner does not make out any triable issue and the High Court, dealt with the matter correctly and justifiably rejected the petitioner's application under Order 37, Rule 3 C.P.C. and the same does not call for interference by this Court. [Paras 7 to 10] [652-E-H; 653-A-H]

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A CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 25144 of 2009.

From the judgment and order dated 20.05.2009 of the High Court of Delhi at New Delhi in RFA No. 147 of 2009.

B Aloke Kr. Bhattacharya, S. Mukherjee and Dharam Bir Raj Vohra for the Petitioners.

Anil Mittal, V. Sishant Gupta and Dr. Kailash Chand for the Respondent.

The Judgment of the Court was delivered by

C **ALTAMAS KABIR, J.** 1. The short point involved in this Special Leave Petition is whether the learned District and Sessions Judge, Delhi, had rightly dismissed the Petitioner's application under Order XXXVII Rule 3, read with Section 151 of the Code of Civil Procedure (C.P.C.) for leave to defend the
D suit filed by the Respondent under Order XXXVII for recovery of Rs.6,68,513/-, together with interest @18% per annum and pendente lite and future interest.

2. On account of business transactions, the Petitioner purchased iron sheets on credit from the Respondent on
E account whereof a sum of Rs.4,42,724/- became due and payable by the Petitioner to the Respondent. The Petitioner settled the accounts and acknowledged the liability in respect of the said amount. Thereafter, the Petitioner issued a cheque for a sum of Rs.3,50,000/- dated 11th October, 2006, towards
F part-payment of the said dues which, according to the Respondent, was signed by one Pyare Lal, the sole proprietor of the Petitioner-firm. On presentation, the said cheque was dishonoured and a legal notice was, therefore, sent by the Respondent to the Petitioner for payment of the outstanding
G dues. Since, despite such notice the Petitioner failed to pay the said dues, the Respondent filed Suit No.57 of 2008 in the Court of District and Sessions Judge, Delhi, under Order XXXVII Rules 1 and 2 C.P.C. The Petitioner entered appearance in the Suit and filed an application under Order XXXVII Rule 3 C.P.C.,
H which was dismissed, as mentioned hereinabove.

3. In the said application for leave to defend the suit, the Petitioner contended that the cheque in question had been handed over by the Petitioner to the Respondent-firm by way of security only and not for presentation. Furthermore, the said cheque was issued by the Petitioner on 11th October, 2000, but the date of the cheque was, thereafter, interpolated and altered from 11.10.2000 to 11.10.2006, and presented to the Bank. It was also indicated that apart from the signature on the face of the cheque and the date mentioned therein, the rest of the cheque was blank and an attempt was made by the Respondent to misuse the same with the intention of withdrawing or misappropriating the amount subsequently inserted in the cheque. A specific allegation was also made to the effect that the date of the cheque issued on behalf of the Petitioner firm for the month of October was always written with the Roman numerical 'X', which was altered and shown in ordinary numerals, which clearly establish the fact that the cheque in question had been doctored to obtain the benefit thereof six years after the same had been issued.

4. In the said application, it was also denied that any cheque of such a large amount had been issued to the Respondent after 1992 in order to bolster the case of the Petitioner that the cheque in question had been forged. It was ultimately stated in the complaint that the Respondent had concocted the story and the Bills placed on record by the Respondent were also forged as the Petitioner had neither purchased any material nor counter-signed the last 4 bills as per the details provided.

5. Before us, the same submissions were reiterated and it was submitted that the learned trial court had wrongly dismissed the Petitioner's application for leave to defend the suit, although, several triable issues had been raised. It was contended that the denial with regard to the validity of the cheque and receipt of goods, were triable issues, which could be decided only upon appraisal of the evidence adduced by

- A the parties. It was also urged that since the cheque was issued in 2000, the claim of the Respondent was also barred by limitation. It was submitted that not only had the learned District and Sessions Judge committed an error in rejecting the Petitioner's application under Order XXXVII Rule 3 C.P.C., but
B that the High Court had also erred in affirming the said order.

6. On the other hand, it was the case of the Respondent that the order of the High Court did not call for interference having regard to the nature of the disputes raised by the Petitioner before the trial court. It was submitted that except for
C a bare denial of the signatures on the ledger accounts settled by the Petitioner and alleging that the cheque issued had been forged, there is nothing concrete in the Petitioner's application under Order XXXVII Rules 1 and 2 read with Section 151 C.P.C. to indicate any triable issue. Even as far the forgery
D alleged in respect of the cheque is concerned, the hollowness of such an allegation would be revealed from the cheque itself which does not show any signs of interpolation in any part thereof.

7. On consideration of the submissions made on behalf
E of the respective parties and on an examination of the photocopy of the cheque itself, it will be apparent that the allegations made in the application filed by the Petitioner under Order XXXVII Rule 3 C.P.C. were without any foundation. As submitted on behalf of the Respondent, there is no sign of any
F interpolation having been made on the cheque and in particular, the date thereof where the figure '10' in Roman numerals had not even been inserted. There are no signs of attempt to erase any of the writings or figures on the cheque to support the allegations made on behalf of the Petitioner.

- G 8. Order XXXVII C.P.C. has been included in the Code of Civil Procedure in order to allow a person, who has a clear and undisputed claim in respect of any monetary dues, to recover the dues quickly by a summary procedure instead of taking the long route of a regular suit. The Courts have consistently held
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that if the affidavit filed by the defendant discloses a triable A
issue that is at least plausible, leave should be granted, but
when the defence raised appears to be moonshine and sham,
unconditional leave to defend cannot be granted. What is
required to be examined for grant of leave is whether the
defence taken in the application under Order XXXVII Rule 3 B
C.P.C. makes out a case, which if established, would be a
plausible defence in a regular suit. In matters relating to
dishonour of cheques, the aforesaid principle becomes more
relevant as the cheques are issued normally for liquidation of
dues which are admitted. In the instant case, the defence would C
have been plausible had it not been for the fact that the
allegations relating to the interpolation of the cheque is without
substance and the ledger accounts relating to the dues, clearly
demonstrated that such dues had been settled between the
parties. Moreover, the issuance of the cheque had never been D
disputed on behalf of the Petitioner whose case was that the
same had been given on account of security and not for
presentation, but an attempt had been made to misuse the
same by dishonest means.

9. Against such cogent evidence produced by the plaintiff/ E
respondent, there is only an oral denial which is not supported
by any corroborative evidence from the side of the Petitioner.
On the other hand, the ledger book maintained by the
Respondent and settled by the Petitioner had been produced
on behalf of the Respondent in order to prove the transactions F
in respect of which the cheque in question had been issued by
the Petitioner.

10. In our view, the defence raised by the Petitioner does
not make out any triable issue and the High Court, has dealt
with the matter correctly and has justifiably rejected the G
Petitioner's application under Order XXXVII Rule 3 C.P.C. and
the same does not call for interference by this Court. The
Special Leave Petition is, therefore, dismissed, but without any
order as to costs.

D.G. SLP dismissed. H