

Raj Duggal

Vs

Ramesh Kumar Bansal

Civil Appeal No. 4358 of 1990

(M. N. Venkatachaliah, N. M. Kasliwal JJ)

06.08.1990

ORDER

1. We have heard learned counsel for both the parties. Special leave granted.
2. The appeal is against the order made by the High Court of Punjab and Haryana dismissing Civil Review No. 3067 of 1989 affirming the order dated July 24, 1989 in Suit No. 256 in the Court of Sub-Judge, 1st Class, Chandigarh, declining leave the appellants to defend the suit which was brought under Order 37 Rule 2, CPC.
3. Leave is declined where the court is of the opinion that the grant of leave would merely enable the defendant to prolong the litigation by raising untenable and frivolous defences. The test is to see whether the defence raises a real issue and not a sham one, in the sense that if the facts alleged by the defendant are established there would be a good or even a plausible defence on those facts. If the court is satisfied about that leave must be given. If there is a triable issue in the sense that there is a fair dispute to be tried as to the meaning of a document on which the claim is based or uncertainty as to the amount actually due or where the alleged facts are of such a nature as to entitle the defendant to interrogate the plaintiff or to cross-examine his witnesses leave should not be denied. Where also, the defendant shows that even on a fair probability he was a bona fide defence, he ought to have leave. Summary judgments under Order 37 should not be granted where serious conflict as to matter of fact or where any difficulty on issues as to law arises. The court should not reject the defence of the defendant merely because of its inherent implausibility or its inconsistency.
4. On a consideration of the material in this case - we have looked into the defence sought to be raised and the criminal complaint earlier lodged - we think that a triable issue arises. On the analogous provisions of Order 14 of the Rules of Supreme Court in England it was held that where the defence can be described as more than "shadowy" but less than "probable" leave to defend should be given. [See pages 146 and 147 of the Supreme Court Practice, 1988].
5. The appeal is, accordingly, allowed and the appellants granted leave to defend the suit on condition that the amount of Rs. 20,000 deposited in this case pursuant to the earlier orders made in this proceeding shall, during the pendency of the suit, be paid to and retained by the respondent-plaintiff subject to the condition that if ultimately respondent-plaintiff fails in his suit he shall be liable to reconstitute the said sum of Rs. 20,000 to the appellants defendant with interest thereon at 9 per cent per annum.
6. The order of the High Court dated October 17, 1989 and of the trial court dated July 24, 1989 are both set aside and leave to defend granted on the aforesaid terms.

7. We must advert to one another submission made on behalf of the appellant. It was stated that the appellant had from time to time during the pendency of the matter at the trial court deposited in that court certain sums towards the suit claim. If that be so the appellant shall be entitled to withdraw those deposits. However, plaintiff-respondent shall be entitled to withdraw the sum of Rs. 20,000 deposited in the Registry of this Court.

8. The appeal is disposed of accordingly. No costs.

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