

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

MISC. PETITION No. 603 of 2023

BETWEEN:-

- SATISH GEHLOT S/O MOHAN GEHLOT, PRO.
1. GEHLOT AGRO TRADERS, ANJAD NAKA WARD
NO. 10, BARWANI (MADHYA PRADESH)
GEHLOT AGRO TRADERS THROUGH
2. PROPRIOTOR SATISH GEHLOT S/O MAHEN
GEHLOT ANJAD NAKA, WARD NO. 10,
BARWANI (MADHYA PRADESH)

.....PETITIONER

(BY SHRI YASHWANT PAGARE - ADVOCATE)

AND

M/S KRISHNA IRRIGATION INDIA PVT. LTD.,
THROUGH DIRECTOR, SHRI UNNIKRISHNA
PALLAI S/O SHRI BHASKARAN PILLAI, AGED
ABOUT 52 YEARS, OCCUPATION: BUSINESS 309
MAN HERITAGE 6/2 TUKOGANJ HIGH COURT KE
PASS. DISTRICT INDORE (MADHYA PRADESH)

.....RESPONDENT

*(BY SHRI VINAY SARAF, LEARNED SENIOR ADVOCATE WITH SHRI
SANJIL JAIN - ADVOCATE)*

.....
Reserved on : 21.07.2023

Pronounced on : 23.08.2023
.....

This petition having been heard and reserved for orders, coming on for pronouncement this day, the court passed the following:

ORDER

1. By this petition preferred under Article 227 of the Constitution of India the defendants/petitioners have challenged the order dated 10.01.2023 passed in RCS No.175-B/2021 by the 11th Civil Judge, Senior Division, District Indore whereby their application under Order 37 Rule 3(5) of the CPC for grant of leave to defend the suit has been rejected.
2. The plaintiff/respondent has instituted a summary suit before the Trial Court under the provisions of Order 37 of the CPC for recovery of a sum of Rs.44,20,022/- from the defendants submitting that it is a private limited company engaged in business of sale of PVC pipes and drips sprinklers. It had supplied goods to the defendants on various dates worth Rs.23,01,877/-. The defendants paid a sum of Rs.1,75,873/- only and did not pay any further amount. For the total amount of Rs.30,66,892/- due the defendants issued a cheque to plaintiff which was dishonored on 07.06.2019 for insufficiency of funds. Notice was issued to the defendants but no payment was made by them as a result of which the suit has been filed.
3. Upon service of summons upon them, the defendants filed an application under Order 37 Rule 3(5) of the CPC supported by an affidavit for leave to defend the suit submitting that they do not know

the plaintiff and have never entered into any transaction with it. The defendants have never been a dealer of plaintiff nor were appointed as such by plaintiff. M/s. Noble Polymers Silvasa through Manager, Madhu Kumar Acharya had contacted the defendants for supply of drip irrigation and pipe fitting to it. On 15.06.2017 it had appointed the defendants as its dealer. At that time as per policy of the said firm two cheques were issued by defendants by way of security to it which were blank and had only been signed. However, subsequently due to change in policy by the State Government the defendants did not remain to be a dealer. No goods had been purchased by defendants from M/s. Noble Polymers which through its Manager Madhu Kumar Acharya has colluded with plaintiff which with *mala fide* intention has instituted the present suit on the basis of dishonour of cheques by filling and presenting them before the Bank though no amount was payable thereunder. The application was contested by plaintiff by filing its reply to the same.

4. The application has been rejected by the trial Court by holding that the cheques were issued by defendant No.1 Satish Gehlot and were signed by him. Though defendants contend that M/s. Noble Polymers had appointed them as a dealer and the cheques had been issued to it by way of security but no document as regards appointment of defendants as a dealer has been produced by them. The plaintiff had issued a notice to defendants on 10.06.2019 after which complaint was made by them

to the Police on 11.08.2022 i.e. subsequent to institution of the suit hence does not help them in any manner and appears to have been made only for creating a ground for defence in the suit. The grounds as have been taken by the defendants in their application do not appear to be *bona fide* hence leave cannot be granted to them.

5. Learned counsel for the defendants/petitioners has submitted that the defendants have given in detail the grounds in their application on which leave to defend was sought for. Those grounds are quite substantial in nature. The correctness of the averments made in the application was not required to be proved at this stage itself which would be a matter of evidence. For the present the defendants were only required to *prima facie* show that they have substantial defence to offer. The trial Court has illegally disbelieved their case for non-production of documents by them. The matter has been decided by the trial Court on merits itself which is impermissible.

6. Per contra, learned senior counsel for the plaintiff/respondent has submitted that plaintiff had clarified in its reply that the defence raised by the defendants was neither plausible nor probable. Defendants have no substantial defence and have not raised any genuine triable issues and the defence raised is frivolous and vexatious. It had been clarified by way of the documents brought on record that the transactions of defendants were with plaintiff itself and not with M/s. Noble Polymers. The supply was made by plaintiff to defendants after purchasing the

goods from M/s. Nobel Polymers. There was no independent transaction between the defendants and M/s. Nobel Polymers and the transactions carried out by the Manager Madhu Kumar Acharya were transactions of plaintiff and not of M/s. Nobel Polymers. No document was filed by defendants to show any agreement with M/s. Nobel Polymers. The Police report has been lodged by defendants only after institution of the suit as an after thought and two years after issuance of notice by plaintiff to them. Leave to defend has hence rightly been denied by the trial Court. Reliance has been placed on the decision of the Supreme Court in **IDBI Trusteeship Services Limited V/s. Hubtown Limited 2017 (1) SCC 568.**

7. I have heard the learned counsel for the parties at length.

8. In **IDBI Trusteeship Services Limited (supra)** the principles on which leave to defend is to be granted under Order 37 Rule 3(5) of the CPC have been laid down as under :-

“17. Accordingly, the principles stated in para 8 of *Mechelec case* [*Mechelec Engineers & Manufacturers v. Basic Equipment Corpn.*, (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in *Milkhiram case* [*Milkhiram (India) (P) Ltd. v. Chamanlal Bros.*, AIR 1965 SC 1698 : (1966) 68 Bom LR 36] , as follows:

17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to

unconditional leave to defend the suit.

17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is *ordinarily* entitled to unconditional leave to defend.

17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.

17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.”

9. As per the aforesaid dictum, leave to defend is to be granted when the Court is satisfied that the defendant has a substantial defence,

that is, a defence that is likely to succeed or if the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence or raises triable issues though a doubt may be left in the mind of the trial Judge about his good faith or the genuineness of the triable issues or when the defendant raises a defence which is plausible but improbable. It is only when defendant has no substantial defence and/or raises no genuine triable issues and it is found that the defence is frivolous and vexatious, that leave to defend is to be refused. .

10. Thus, it is to be considered whether the defendants have raised any triable issues in the present matter or that they have a substantial defence. The ancillary question which needs consideration is as to whether the defendants at the time of seeking leave to defend were required to substantiate and prove the plea taken by them in their application. The Supreme Court in the case of **Santosh Kumar V/s. Bhai Moolsingh** AIR 1958 SC 321 has held that 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 defendants are established, there would be a good, or even a plausible, defence on those facts. The defendants should raise an issue of fact, the truth and good faith of which could be tested by going into the evidence. It has been observed that a defence which on the face of it is clear would not become vague simply because the evidence by which it is to be proved is not brought on file at the

time the defence is put in. The stage of proof can only come after the defendant has been allowed to enter an appearance and defend the suit, and that the nature of defence has to be determined at the time when the affidavit is put in. At that stage all that the Court has to determine is whether “if the facts alleged by the defendant are duly proved” they will afford a good, or even a plausible, answer to plaintiff's claim. Once the Court is satisfied about that, leave cannot be withheld and once leave is granted the normal procedure of a suit so far as evidence and proof go, obtains.

11. In **Milkhiram (India) Privale Limited and another Vs. Chamanlal Bros. AIR 1965 SC 1698** also the Supreme Court held that whether the defence raises a triable issue or not has to be ascertained by the Court from the pleadings before it and the affidavits of the parties and it is not open to it to call for evidence at this stage.

12. In the instant case, in their application the defendants had specifically stated that they had entered into an agreement with M/s. Nobel Polymers for purchase of the goods and had issued blank cheques in its favour by way of security. They had no direct dealings or transactions with the plaintiff. M/s. Nobel Polymers in collusion with plaintiff presented the cheques to the Bank for creating a ground for institution of the suit. It was also stated that due to subsequent change in policy by the State Government no goods were in fact supplied by M/s. Nobel Polymers hence they are not liable for making any payment.

It was also stated that defendants acquired knowledge of the aforesaid facts upon issuance of notice by plaintiff to them and thereafter lodged the report with the Police albeit two years after the notice.

13. From a perusal of the averments of the entire application, it is seen that defendants have shown that they have substantial defence in the matter. Whether such defence is actually proved by them is not a matter to be considered at the present stage but only after appreciation of evidence to be led by the parties. At this stage the defendants were not required to prove the defence as raised by them. They only had to show that if the facts alleged by them are duly proved, they will afford a good, or even a plausible, answer to plaintiff's claim. The trial Court has illegally rejected the application by holding that defendants have not produced any documents in support of the defence as sought to be raised by them.

14. The contentions of plaintiff that the person with whom the defendants state they had dealt with was an employee of plaintiff itself and had carried out the transactions for plaintiff and not for alleged M/s. Noble Polymers is also a matter to be adjudicated at the appropriate stage and no finding in that regard is to be presently given. What has to be seen is as to whether defendants have raised a substantial defence or a triable issue and not whether they have proved the same. The trial Court has hence illegally rejected the application of the defendants by observing that they have not been able to substantiate the defences as

raised by them.

15. In my opinion, by way of their application, the defendants have raised substantial defence i.e. a defence likely to succeed. The same is in any case a triable issue raised by the defendants indicating that they have a fair and reasonable defence although may not be a positively good defence. There was no reason for the trial Court to have rejected their application or even to have been left with a doubt about their good faith or genuineness of the triable issue.

16. Thus, in view of the aforesaid discussion the impugned order cannot be sustained and is hereby set aside. The application under Order 37 Rule 3(5) of the CPC filed by defendants is allowed and they are granted leave to defend unconditionally. The petition is accordingly allowed and disposed off.

(PRANAY VERMA)
JUDGE

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