

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(C) NO.25144 OF 2009

Ms. V.K. Enterprises

... Petitioner

Vs.

M/s. Shiva Steels

... Respondent

J U D G M E N T

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 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 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 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 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., 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 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 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 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 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 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 interpolation having been made on the cheque and in particular, the date thereof where the figure '10' in Roman numericals 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.

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 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 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 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 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 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/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 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 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.

.....J.
(ALTAMAS KABIR)

New Delhi
Dated: 04.08.2010

.....J.
(A.K. PATNAIK)