

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.6058 OF 2009
(Arising out of S.L.P. (C) No.10386 of 2007)

Green Gold Timber Pvt. Ltd.

...Appellant(s)

Versus

Shipra Ocean Trade Pvt. Ltd.

...Respondent(s)

O R D E R

Leave granted.

The respondent filed summary Suit No.19/2003 under Order 37 of the Code of Civil Procedure (for short, "CPC") for recovery of Rs.89,76,162.80 from the appellant. On notice, the appellant filed an application for leave to defend. By an order dated 26.7.2005, the trial Court allowed the application and granted unconditional leave to defend. That order was set aside by the High Court in Special Civil Application No.17851/2005 on the premise that the trial Court did not record a clear finding whether the claim put forward by the plaintiff is genuine or not and whether the defence of the defendant gave rise to a triable issue. In the opinion of the High Court, without recording a clear finding on these issues, the trial Court was not justified in granting the unconditional leave to defend. After remand, the trial Court passed order dated 16.10.2006, whereby it allowed the application for leave to defend subject to production of bank guarantee of Rs.60 lacs by the appellant herein. That order has been confirmed by the High Court by dismissing Special Civil Application No.24969/2006.

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We have heard learned counsel for the parties and scrutinized the record. A perusal of the trial Court's order shows that while granting conditional leave to defend to the appellant, the trial Court recorded a specific finding that triable issue is involved in the present case. Though the High Court dismissed the Special Civil Application filed by the appellant, it did not disturb the finding recorded by the trial court that triable issue is involved in the case. Therefore, the only question which requires consideration is whether the trial court was justified in requiring the appellant to produce bank guarantee of Rs.60 lacs as a condition for grant of leave to defend the suit filed by the respondent. That question will have to be answered in favour of the appellant in view of the judgment of a 3-Judge Bench of this court in the case of M/s. Mechalec Engineers & Manufactureres vs. M/s. Basic Equipment Corporation, AIR 1977 SC 577. In that case, it has been laid down that if the defendant is able to show that there was triable issue in the suit then it is entitled to grant of leave unconditionally. The ratio of that judgment is squarely applicable to the present case.

Accordingly, the appeal is allowed and the condition of producing bank guarantee of Rs.60 lacs imposed by the trial Court while granting leave to the appellant to defend the suit filed by the respondent, which condition has been approved by the High Court, is set aside. The Trial Court is directed to dispose of the suit within a period of one year from the date of receipt/production of copy of this order.

.....J.
[B.N. AGRAWAL]

.....J.
[G.S. SINGHVI]

New Delhi,

September 04, 2009.

SUPREME COURT OF INDIA



JUDGMENT