



Summary Suit No.01/2022
Laxmi Vs. Vilas
CNR-MHLA120042032022

ORDER BELOW EXH.18

1. The defendant has filed the present application under Order 37(3)(5) of Civil Procedure Code to grant leave to defend the suit.
2. It is contended by the defendant that plaintiff has filed false suit against him, therefore, it is necessary to grant permission to contest the suit by filing say. He has submitted several grounds in his application and requested to grant permission to contest the suit, if the permission is not granted he will lose the opportunity to contest the suit on merit. Therefore, he requested to grant permission.
3. The plaintiff has filed his say and submitted that, defendant served suit summons on 24/01/2023 and as per law within 10 days after the service of summons, defendant failed to file application leave to defend before the court and after expiry of limitation period, application filed which was rejected by the court. Therefore, defendant do not have again right to apply for permission for leave to defend. Therefore, the contents in the application are totally false. He denied all the material allegation against her and requested to reject the application.
4. I have heard the Ld. Advocate for both sides.
5. Perused the application and record, it appears that the present suit is summary suit. As per Rule 3 of Order 37, after service of summons, defendant may at any time within 10 days of such

service, enter an appearance. Defendant failed to apply leave to defend within 10 days from the service of summons. Therefore, court has rejected leave to defend application of defendant. Thereafter, now again defendant moved this application under Rule 3(5) of Order 37 of C.P.C. Therefore, it is necessary to quote Rule 3(5) of Order 37 of C.P.C. read thus;

(5) The defendant may, at any time within 10 days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such a suit and leave to defend may be granted to him unconditionally or upon such a terms as may appear to the court or to be just.

Provided that, leave to defend shall not be refused unless the court is satisfied that, the fact disclosed by the defendant do not indicate that, he has substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious.

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in the court.

6. On perusal of afore provision, it appears that, court can grant leave to defend after service of summons for judgment. No where from afore provision it appears that, if leave to defend application after service of summons rejected, then application leave to defend after service of summons for judgment is not maintainable. Further, the condition mentioned in it that, at any time within 10 days from the service of summons for judgment, defendant shall have apply for leave to defend. Herein case, summons for judgment issued on 01/04/2023 and it was served on defendant on 03/04/2023. Defendant filed this application for leave to defend on 06/04/2023. It means within 10 days after service of summons, defendant applied for leave to defend the suit. On perusal of application of defendant it appears that, he has taken several defence and such a defence are sufficient to entitle him to defend as all the facts mentioned in the application supported by affidavit.

7. Ld. Advocate for defendant relied upon authority of Hon'ble Bombay High Court in ***Ravi Prakash Khemka & Ors. vs. Bank of India & Ors. reported in Mh.L.J. 2007 (3) page No.8***, wherein Hon'ble Bombay High Court held that, important issue regarding the maintainability of summary suit has been raised by the defendant and that entitles then grant of unconditional leave to defend.

8. Ld. Advocate for defendant relied upon authority of Hon'ble Supreme Court in ***M/s. Sunil Enterprises and Ors. Vs. S.B.I. Commercial and International Bank Ltd., decided on 30/04/1998***, wherein Hon'ble Apex Court held that, it cannot be said that, the defence raised by the appellant is totally defenseless or moonshine or illusory as noticed and granted unconditional leave to defendant to defend the suit.

9. Herein case, defendant no where admitted any part of amount claimed by the plaintiff. Several issues raised by the defendant. Therefore, if the permission is not granted, then he will lose the opportunity to contest the suit on merit. On perusal of application, defendant has the good defence to claim the suit on merit. Therefore, in view of afore cited supra and provision made under C.P.C., defendant deserves for unconditional permission for leave to defend the suit. Hence, application is deserves to be allowed and I pass the following order;

ORDER

1. Application for leave to defend is granted unconditionally.
2. The defendant hereby directed to file written statement within four weeks from today.

3. The suit shall be proceeded accordingly thereafter.
4. No order as to costs.

Date : 28/07/2023

(**N.A.L. Shaikh**)
2nd Jt. Civil Judge J.D. Nilanga.