

IN THE HIGH COURT OF SINDH AT KARACHI

First Appeal No. 156 of 2017

Before : Mr. Justice Irfan Saadat Khan
Mr. Justice Fahim Ahmed Siddiqui

M/s. Dadabhoy Cement Industries Ltd. Appellant

Versus

Ahsan Ahmed. Respondent

Date of hearing : 10.02.2020

Date of judgment : _____

Appellant M/s. Dadabhoy Cement Industries Ltd. through Mr. Bashir Ahmed, advocate.

None present for respondent Ahsan Ahmed.

J U D G M E N T

FAHIM AHMED SIDDIQUI, J:- The respondent filed a Summary Suit (Summary Suit No. 39/2009) in which the appellant's request to leave to defend was conditionally allowed by trial Court i.e. District Court Karachi East. Since the appellant could not fulfil the condition i.e. furnishing a security equivalent to the negotiable instruments i.e. cheque No. 4566387 amounting to Rs.1,94,500.00 and cheque No.5294385 amounting to Rs.1,49,283.75, both drawn on Saudi Pak Commercial Bank Ltd; therefore, leave to defend was dismissed and the said Suit was decreed as prayed through the impugned judgment and decree dated 27-01-2010 and 02-02-2010 respectively. The appellant filed a review application but the same was also dismissed, hence the instant appeal was filed.

2. The learned counsel for the appellant submits that the appellant has a good prima-facie case; as such an unconditional leave had to be granted but the learned trial Court issued directions for furnishing security within 10 days. He submits that 10 days' time for a public limited company was not sufficient to comply with the directions. According to him, the delay in fulfilling the condition was unintentional, as the appellant has filed an application under Section 151 & 152 CPC for correction/review of the order of furnishing security on the ground that the appellant has a good defence. He submits that at the time of applying for correction/review, the Suit was yet not decreed, as such the trial Court entertained the said application by issuing notices. According to him, the said application was dismissed and the Suit was decreed. He contends that after the dismissal of the aforesaid application, some time should have been given to the appellant for compliance of furnishing security. He further submits that the appellant has already furnished security before this Court as per directions issued vide order dated 29-04-2010 and now it will be appropriate that the matter may be remanded for adjudication on merits.

3. None present for the respondent in a spite of service and appearance of the name of the counsel for the respondent in the cause list.

4. We have heard the arguments and have gone through the available record. It reflects from the record that the leave to defend was granted with the condition to furnish security up to the extent of the Suit amount within 10 days. The leave to defend order was passed on 28-10-2009 in which it was not observed that if the compliance within 10 days was not made, the Suit would be decreed as prayed. It is also worth noting that even after a lapse of the aforementioned period, no decree was passed. Nevertheless, the appellant has filed an application for correction/review of the order in February, 2010 and the said application was entertained by

the trial Court by issuing notices and after hearing the parties, the trial Court dismissed the said application vide order dated 27-1-2010 and on the same date, the impugned judgment was passed.

5. We are of the view, that in case of a conditional order for leave to defend, the trial Court has to observe that in case of non-compliance of the condition, laid down in the leave to defend order within the stipulated period, the Suit will be decreed. In the instant case, even after the lapse of the ten days' time, no order/judgment for decreeing the Suit was passed. Instead, after a lapse of a considerable period, the trial Court has entertained another application for review, which itself means that for the time being the trial Court has abjured or suspended the condition. In these circumstances, it would be appropriate for the trial Court to give an opportunity to the appellant to fulfil the condition, laid down in the earlier order. In the instant matter, the appellant has furnished security before this Court, which spells out their seriousness in respect of defending the case on merits. We are of the view that since an opportunity was not given to fulfil the condition of furnishing security after the dismissal of the appellant's application under Sections 151 & 152 CPC, while they have already furnished security before this Court; therefore, it will be appropriate that such opportunity is provided to the appellant.

6. We, therefore, set aside the impugned order/judgment and decree and remand the matter to the trial Court for deciding the same in accordance with the law. It is further directed that the security document deposited by the appellant with the Nazir of this Court be sent to the trial Court for keeping the same in safe custody till the disposal of the Summary Suit filed by the respondent. The instant appeal is allowed with no order as to cost.

JUDGE

JUDGE