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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.3005 of 2015

Date of decision: May 04, 2015

Vinod Sindhu and another

.....Petitioners

Versus

Arpinder Singh Grewal

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Satyaveer Singh, Advocate
for the petitioners.

SABINA, J

Petitioner has filed this petition challenging the order dated 23.05.2014 (Annexure P-1), whereby petitioners have been directed to furnish security.

Learned counsel for the petitioners has submitted that the trial Court had found that the defence taken by the petitioners, was not so illusory, sham or practically moonshine. Hence, the trial Court should have permitted the petitioners to defend the suit without furnishing any security. In support of his arguments, learned counsel for the petitioner has placed reliance on ***M/s. Sunil Enterprises and another and others versus SBI Commercial and International Bank Ltd.***, 1998 AIR (SC) 2317, wherein it was held as under:

*“4. The position in law has been explained by this Court in **Santosh Kumar vs. Mool Singh, (1958)***

S.C.R. 1211 ; Milkiram (India) Private Ltd. v. Chaman Lal Bros., AIR 1965 Supreme Court 1698 and Michalec Eng. v. Basic Equipment Corporation, AIR 1977 Supreme Court 580. The propositions laid down in these decisions may be summed up as follows:-

(a) If the defendant satisfies the Court that he has a good defence to the claim on merits, the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence, although not a possibly good defence, the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is, if the affidavit disclosed that at the trial he may be able to establish a defence to the plaintiff's claim, the court may impose conditions at the time of granting leave to defend - the conditions being as to time of trial or mode of trial but not as to payment into Court or furnishing security.

(d) If the defendant has no defence, or if the defence is sham or illusory or practically moonshine, the defendant is not entitled to leave defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine, the Court may show mercy to the defendant by enabling him to try to prove a defence but at the same time protect the plaintiff imposing the condition that the amount claimed

should be paid into Court or otherwise secured.

*In fact in identical matters on the file of the said High Court in summary **suit No. 2963 of 1990 Dena Bank vs. M/s. Sunil Enterprises** and summary **suit No.1153 of 1989, Bank of India vs. Mahendra Sarabhai Choksi**, leave to defend had been granted to defendants.*

5. *In those cases the circumstances arising are that the Bills of Exchange were accepted by the defendant even though they had already discharged earlier Bills of Exchange as and when they were due and the bank had continued to pay out such large amounts of Bills of Exchange accepted by the party who is already a defaulter. It is also contended that some of the Bills of Exchange were mere secondary documents and, therefore, these matters require examination. It cannot be said that the defence raised by the appellants is totally defenceless or moonshine or illusory as noticed earlier in the course of this order. Therefore, the view taken by the High Court that appellants have absolutely no prima facie case, may not be correct. And in the circumstances, we allow appeals, set aside the order made by the Division Bench and the judge on the original side of the Bombay High Court and dismiss the Summons for Judgment, grant leave and direct unconditional leave to the defendant to defend the suit. Appeals, therefore, stand allowed accordingly.”*

In the present case, respondent had filed suit for recovery on the basis of cheque dated 27.04.2010 issued by the petitioners in the sum of ₹90,00,000/-. However, when the cheque was presented for encashment, the same was

dishonoured and in this regard, complaint under Section 138 of the Negotiable Instruments Act, 1881 is pending against the petitioner. The plea of the petitioners is that the cheque in question had been stolen and mis-utilised by the respondent. In this regard, petitioners have also filed a complaint against the respondent. In this factual background, the learned trial Court rightly held that the defence of the petitioners could not be considered to be so illusory, sham or practically moonshine to deny them the opportunity to defend the suit. Further, the learned trial Court in order to protect the right of the plaintiff, rightly directed the petitioners to furnish the security/surety qua the amount in question.

I have gone through the judgment relied upon by the learned counsel for the petitioners. In the facts and circumstances of the present case, the case of the petitioner falls in proposition (e) as summed up in para No.4 of the said judgment.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

May 04, 2015

m.singh