

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

CR No.5400 of 2015 (O&M).

Date of Decision: 26.08.2015.

M/s Suresh Enterprises and another

....Petitioners.

VERSUS

M/s Aashish Industrial Corporation

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. S.K. Panwar, Advocate for the petitioners.

SNEH PRASHAR, J.

By way of this civil revision filed under Article 227 of Constitution of India, the petitioners prayed for setting aside the order dated 08.07.2015 passed by learned Civil Judge (Junior Division), Faridabad, whereby their application dated 29.07.2013 under Order XXXVII of the Code of Civil Procedure (for short, “the Code”) for leave to defend the suit had been allowed subject to the condition that they shall deposit 50% of the recovery amount i.e. Rs.3,95,664/- in the Treasury and shall produce the treasury challan on the case file.

The submissions made by learned counsel representing the petitioners have been considered.

The facts pleaded indicate that a suit under Order XXXVII of the Code for recovery of Rs.3,95,664/- with costs and pendente lite interest was filed by the respondent against the petitioners. Despite notice of the suit, the petitioners did not appear and were proceeded against ex parte vide order dated 02.11.2011. On an application filed under Order 9 Rule 13 of the Code by the petitioners, vide order dated 08.07.2015 the ex parte proceedings were set aside subject to payment of Rs.2000/- as costs. Alongwith their application for setting aside the ex parte proceedings, the petitioners filed an application under Order XXXVII Rule 5 of the Code praying for grant of leave to defend the suit. Respondent raised certain objections but the application was conditionally allowed vide impugned order dated 08.07.2015. The condition imposed was that the petitioners were directed to deposit 50% of the recovery amount i.e. Rs.3,95,664/- in the treasury.

The grievance of the petitioners is that the condition imposed was illegal and arbitrary. Learned counsel for the petitioners submitted that the petitioners had good defence on merits and therefore, they were entitled to unconditional leave to defend. Learned counsel further submitted that even if the petitioners were to be granted conditional leave to defend the amount they have been directed to deposit, is on the higher side and be reduced.

In Sunil Enterprises v. SBI Commercial & International Bank Ltd., 1998(5) SCC 354 the principles on which leave to defend can be granted were laid down which are as under:-

“(a) If the defendant satisfied 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 discloses 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 made 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.”

As indicated in the order of learned trial Court, although the petitioners claimed that they had paid the entire amount for recovery of which the suit had been filed, no receipt showing payment to the plaintiff-respondent in cash was placed on record. Considering the said fact, the petitioners were given a chance enabling them to try and prove their defence and were granted conditional leave to defend. They were directed to deposit 50% of the recovery amount i.e. Rs.3,95,664/-. The amount ordered to be deposited cannot be said to be on the higher side especially when so far the petitioners could produce nothing to support their plea of payment. Learned counsel for the petitioners failed to demonstrate any error

or law in the impugned order passed by learned trial Court. Finding no illegality or perversity in the impugned order passed by learned trial Court warranting intervention, this petition is dismissed.

(SNEH PRASHAR)
JUDGE

26.08.2015.
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