

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

CR No.6445 of 2015 (O&M).

Date of Decision: 30.09.2015.

Rattan Singh Ranga

....Petitioner.

VERSUS

Ram Karan

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Kartar Singh Malik-I, Advocate for the petitioner.

SNEH PRASHAR, J.

CM-20770-CII-2015

Allowed as prayed for.

CR-6445-2015

By way of this civil revision filed under Article 227 of Constitution of India, the petitioner prayed for setting aside the order dated 01.09.2015 passed by learned Additional Civil Judge (Senior Division), Rohtak, whereby his application for leave to defend the suit had been allowed subject to the condition that he shall furnish security of an amount of Rs.1,62,000/- within one month from the date of order.

The submissions made by Mr. Kartar Singh Malik-I, learned

counsel representing the petitioner have been considered.

The facts pleaded indicate that a suit under Order XXXVII of the Code of Civil Procedure (for short, “the Code”) for recovery of Rs.10,62,000/- was filed by the respondent against the petitioner. On receipt of summons, petitioner appeared before the trial Court and vide order dated 27.10.2008, the trial Court ordered for serving summons of judgment as per Order XXXVII Rule 3(4) of the Code. Against that order, the respondent filed Civil Revision No.6246 of 2008 which was disposed of by this Court vide order dated 20.11.2012 with the direction that the petitioner shall pay Rs.10,000/- as costs precedent and thereupon trial Court shall serve summons of judgment on him as required under Order XXXVII Rule 3(4) of the Code and then to proceed with the suit in accordance with law. The petitioner was also permitted to file application for leave to defend the suit on payment of cost. Accordingly, the petitioner filed an application for leave to defend the suit. Respondent raised certain objections but the application was conditionally allowed vide impugned order dated 01.09.2015. The condition imposed was that the petitioner was directed to furnish security of an amount of Rs.1,62,000/- within one month from the date of order.

The grievance of the petitioner is that the condition imposed was illegal and arbitrary. Learned counsel for the petitioner submitted that the petitioner had good defence on merits and therefore, he was entitled to unconditional leave to defend. Learned counsel further submitted that even if the petitioner was to be granted conditional leave to defend the security

for the amount he has been directed to furnish, is on the higher side and be reduced.

To support his argument that when the petitioner raises a triable issue indicating that he has a fair or *bona fide* or reasonable defence although not a positively good defence the respondent is not entitled to sign judgment and the petitioner is entitled to unconditional leave to defend, learned counsel relied upon **Defiance Knitting Industries Pvt. Ltd. vs. Jay Arts, 2006(4) R.C.R. (Civil) 493.**

In **M/s 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 as under:-

“(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 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.”

In Defiance Knitting Industries Pvt. Ltd.'s case (*supra*) also it

is held by Hon'ble Supreme Court that where the Court entertains a genuine doubt on the question as to whether the defence is genuine or sham or whether it raises a triable issue or not, the Court may impose conditions in granting leave to defend. In this case, the petitioner had sought leave of the Court to defend the case stating that he had not borrowed the amount and the signatures on the pronote are forged. Mere denial of execution of promissory note is not enough to grant leave to defend without imposition of condition of security. Considering the said facts, learned trial Court rightly granted leave to defend the case to the petitioner subject to his furnishing security equivalent to the amount sought to be recovered by the respondent. The security of the amount directed to be furnished cannot be said to be on the higher. Learned counsel for the petitioner 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

30.09.2015.

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