

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7555 of 2014 (O&M)
Date of Decision: 10.02.2015

Atma Singh

...Petitioner

Versus

Jail Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Sherry K. Singla, Advocate
for the petitioner.

Mr. Deepak Aggarwal, Advocate
for the respondent.

R.P. Nagrath, J. (Oral)

Challenge in the instant petition is to the order dated 25.09.2014 passed by the learned trial Court whereby on the concession made by plaintiff-respondent, leave to defend was granted but the learned trial Court has imposed the condition for furnishing surety.

When the matter was listed on 10.11.2014, learned counsel for the petitioner had relied upon the order dated 25.03.2014 passed by this Court in **CR No.2166 of 2014, (Baghera Singh Vs. Om Parkash)**, but that petition is still pending in this Court. In **M/s.**

Mechalec Engineers and Manufacturers Vs. M/s. Basic Equipment Corporation, AIR 1977 Supreme Court 577, relied upon by learned respondents' counsel, Hon'ble Supreme Court reiterated the principles to be followed while considering the question for granting leave to defend, which are reproduced below:-

"(a) If the defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and 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 positively good defence the plaintiff is not entitled to sign judgment and 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 to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security.

(d) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the Court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence".

Learned trial Court has not gone into the above aspects while directing the defendant to furnish the security.

In view of the above and after hearing learned counsel for the parties, the instant petition is allowed and impugned order and consequently the order granting leave to defend are set aside and the trial Court is directed to decide the matter afresh and in accordance with law.

The trial Court is directed to dispose of the matter on the prayer for leave to defend within a period of three weeks from the date already fixed.

(R.P. Nagrath)
Judge

10.02.2015
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