

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

C.R.No.1094 of 2012 (O&M)

Date of Decision: January 28th, 2016

Kishan Kumar Malhotra

...Petitioner

Versus

Karnail Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of 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.Ranjan Lohan, Advocate,
for the petitioner.

Mr.Vinod Arya, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

Learned counsel for the petitioner-defendant is aggrieved of the order dated 14.11.2011 (Annexure P-1), whereby, on the statement made by the counsel for the plaintiffs in a suit filed under Order 37 of the Civil Procedure Code, petitioner-defendant has been called upon to contest the suit on furnishing of the bank guarantee. He submits that an application for leave to defend was filed, however, there was no adjudication on the same. Even the condition imposed is contrary to the judgment rendered by the Hon'ble Supreme Court in **M/s.Mechalec Engineers & Manufacturers Vs. M/s. Basic Equipment Corporation, AIR 1977 Supreme Court 577.**

Mr.Vinod Arya, learned counsel appearing on behalf of the respondent-plaintiffs submits that there is no illegality and perversity in the

order under challenge. The trial Court, on the basis of the statement made by the plaintiffs, has granted leave to defend subject to furnishing of bank guarantee. No hardship would be caused if the suit is tried with the condition imposed.

I have heard the learned counsel for the parties and appraised the paper book.

The case law with regard to granting of leave to defend with or without condition is no longer *res integra* and in this regard, I draw support from the judgment (supra), where it has been held that in what circumstances a party is required to furnish the bank guarantee, however, there is no adjudication on the application/the contents of the application, much less arguments on the same have been noticed while granting leave to defend. I am of the view that the impugned order, whereby the trial Court granted leave to defend on the statement of the respondent-plaintiffs, which is a self-serving statement, is not as per procedure as envisaged in law. The trial Court should be more careful while deciding the applications under the provisions of Order 37 of the Civil Procedure Code.

Accordingly, the impugned order is set-aside. The matter is remitted back to the trial Court to decide the application seeking leave to defend the suit, which is supported by an affidavit, in accordance with law.

The revision petition stands allowed.

January 28th, 2016
ramesh

(AMIT RAWAL)
JUDGE