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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3075-2015

Date of decision : 01.03.2016

Megh Singh

...Petitioner

Versus

Ashok Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Aggarwal, Advocate
for the petitioner.

Mr. Ajeet Pal Singh Pakka, Advocate
for the respondent.

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?

AMIT RAWAL, J. (ORAL)

The petitioner-defendant is aggrieved of the impugned order dated 22.04.2015 granting the relief to contest the suit filed under provisions of Order 37 Code of Civil Procedure, by imposing a condition of furnishing surety bond of equal amount claimed in the plaint.

Mr. Deepak Aggarwal, learned counsel appearing on behalf of the petitioner-defendant submits that once the Court finds that there were triable issues, the condition of furnishing surety bond of equal amount, cannot be imposed in view of the settled proposition of law as laid down by the Hon'ble Supreme Court in **“Mechelec Engineers & Manufacturers V/s Basic Equipment Corporation” 1976 (4) SCC 687**, reiterated in **“M/s Uma Shankar**

Kamal Narain and another V/s M/s M.D. Overseas Ltd.” 2007 (2) RCR (Civil) 585.

Mr. Ajeet Pal Singh Pakka, learned counsel appearing on behalf of the respondent submits that no doubt that the Court observed triable issue, discretion while granting the relief to contest the suit vest with the trial Court and rightly has been exercised by imposing the condition while calling upon the petitioner-defendant to give surety of the equal amount claimed in the plaint. The suit is for recovery of ₹ 2,96,000/- which contained the principal amount and as well as element of interest and thus, submit that there is no illegality and perversity in the order under challenge.

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

It would apt to reproduce the relevant portion of the impugned order:

“After taking into consideration the relevant submissions made by both the parties, I have observed that the plaintiff has filed the present suit for recovery on the basis of the pronote and receipt dated 28.04.2010, however, the defendant has altogether denied the execution of such pronote and receipt and has prayed that the same are false and fabricated. Accordingly, a tribal issue arises between the parties and in the interest of justice, the present application seeking leave to defend stands allowed with the condition that the defendant shall give surety bond of the equal amount as claimed by the plaintiff to secure the interest of the plaintiff in future. Accordingly, now to come up on 11.05.2015 for furnishing surety bonds.

Pronounced.

24.04.2015”

Once, the trial Court formed an opinion, viz-a-viz the fact that the application seeking leave to defend raise viable and triable issue, in view of the ratio decidendi culled out by the Hon'ble Supreme Court rendered in “**Mechelec Engineers' case** (supra), cannot impose a condition of furnishing the surety bond of equal amount as claimed by the plaintiff in the suit. It cannot be moonshine for the respondent-plaintiff.

Keeping in view the aforementioned facts, the impugned order dated 22.04.2015 granting the leave to defend is hereby affirmed, however, the findings viz-a-viz imposition of directions to furnish surety bonds of equal amount is hereby expunged/set aside.

With the aforesaid observations, the revision petition is disposed of.

01.03.2016
yogesh

(AMIT RAWAL)
JUDGE