

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

**Civil Revision No.4691 of 2015**

**Date of Decision: 27.09.2016**

**Sarwan Singh**

**.....Petitioner**

**Vs**

**Jatinder Chaudhary**

**.....Respondent**

**CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. J.S. Cooner, Advocate  
for the petitioner.

Mr. I.S. Pabla, Advocate  
for respondent.

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**RAJ MOHAN SINGH, J.**

[1]. Petitioner has assailed order dated 20.04.2015 (Annexure P-4) passed by Civil Judge (Jr. Divn.) Panchkula vide which application of the petitioner for leave to defend the suit was dismissed.

[2]. Plaintiff/respondent filed a suit under Order 37 CPC for recovery of an amount of Rs.2 lacs along with interest @ 18% per annum from the date of dishonour of cheque. On receipt of summons, defendant/petitioner appeared on 15.09.2014 and moved an application along with affidavit dated 15.09.2014 for leave to defend the suit. The summons were received by the

defendant/petitioner on 15.09.2014 and he filed an application promptly on the same day.

[3]. Trial Court dismissed the application vide order dated 20.04.2015 on the premise that the service of summons under Order 37 Rule 2 CPC was effected upon the defendant/petitioner on 04.09.2014. Period of ten days from 05.09.2014 expired on 15.09.2014. Defendant entered appearance on 15.09.2014 at 6.00 p.m. as per endorsement made on the application for leave to defend itself. The trial Court observed that receipt of application at 6.00 p.m. in the evening was beyond the court hours and, therefore, the application was dismissed on two counts. Firstly that the defendant/petitioner appeared after the expiry of ten days from the date of service and he moved the application on 15.09.2014 at 6.00 p.m. in the evening beyond the court hours. Such appearance of the defendant was not in consonance with the provision of Order 37 CPC.

[4]. Secondly, no application for condonation of delay was moved to show sufficient cause by the defendant in not appearing within the time prescribed. The trial Court observed that the provisions in terms of Order 37 CPC have not been complied with and the defendant/petitioner did not enter

appearance within stipulated period, nor any application for condonation of delay was filed. In this background, the prayer for granting leave to defend the suit was declined by the trial Court on 20.04.2015.

[5]. Order 37 Rule 2 CPC deals with institution of summary suits. For ready reference, the same is reproduced hereasunder”-

*“2. Institution of summary Suits.-*

*(1) A suit, to which this Order applies, may, if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,—*

- (a) a specific averment to the effect that the suit is filed under this Order;*
- (b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and*
- (c) the following inscription, immediately below the number of the suit in the title of the suit, namely:—*

*(Under Order XXXVII of the Code of Civil Procedure, 1908)”.*

*(2) The summons of the suit shall be in form No. 4 in Appendix B or in such other Form as may , from time to time, be prescribed.*

*(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the*

*plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.”*

[6]. The summons of the suit have to be issued to the defendant in form No.4 as shown in Appendix B. The defendant cannot defend the suit as referred in sub-Rule (1) of Rule 2 of Order 37 CPC, unless he enters an appearance. In the event of default in his appearance, the allegation of the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for the amount in question.

[7]. Rule 3 of Order 37 CPC prescribes for the procedure for the appearance of defendant. In the event of service of summons upon the defendant under Rule 2 of Order 37 CPC in the prescribed form, the defendant may at any time within ten days of such service enter an appearance either in person or by a pleader and in either case, he shall file in Court an address for service of notice on him. If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summon for judgment in Form No.4-A in Appendix B or such other form as may be prescribed from time to time returnable not less than ten days from the date of service supported by an affidavit

verifying the cause of action, amount claimed and stating that in his belief, there is no defence to the suit. Further defendant may at any time, within ten days from the service of such summons for judgment by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend the application on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally and upon such terms and conditions as may appear to the Court to be just and proper.

[8]. Apparently the procedure as given in Order 37 Rule 3 and sub-Rules mentioned therein has to be complied with after compliance of Order 37 Rule 2 CPC and sub-Rules. The requirement of Order 37 Rule 2 CPC is that the summons of the suit shall be in Form No.4 in Appendix B. The failure of the defendant in entering appearance within ten days would have enabled the trial Court to pass a decree. The procedure given in Order 37 Rule 3 CPC is somewhat different. Under this Rule, defendant on appearance at any time within ten days of such service shall file in Court an address for service of notice on him. If, the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summon for judgment in Form No.4-A in Appendix B or such other form as may be prescribed from time to time returnable not less than 10 days

from the date of service supported by an affidavit, verifying the cause of action and the amount claimed and stating that in his belief, there is no defence to the suit.

[9]. Evidently, the procedure as enshrined in Order 37 Rules 2 and 3 CPC, thereof are somewhat different. The trial Court has adverted to the delay of one day in appearance of the defendant in compliance to the provision of Order 37 Rule 2 CPC only. Once the trial Court has endorsed the receipt of application on 15.09.2014 at 6.00 p.m. in the evening itself, it was reasonably expected from the trial Court to have condoned the delay of one day, if any, as on 15.09.2014. In other words, the trial Court could have rejected the acceptance of application beyond the court working hours. Once the trial Court was not functioning at 6.00 p.m. in the evening, there was no occasion for the trial Court to have accepted the application. Once the application was accepted, the delay of one day, if any, while computing the period under Order 37 Rule 2 CPC should have been condoned. The issue of grant or rejection thereof in application for leave to defend was the subject matter under Order 37 Rule 3 CPC.

[10]. Since the trial Court has not adverted to such provision in the impugned order, therefore, in considered opinion of this

Court, the impugned order appears to be totally non-speaking on that premise. In view of facts and circumstances of the case, I am of the view that the trial Court needs to be directed to dispose of the application afresh after taking note of relevant provision under Order 37 CPC. However ground of delay of one day may be considered sympathetically in view of endorsement dated 15.09.2014 made at the instance of the trial Court at 6.00 p.m. in the evening. The trial Court shall be obligated to decide the issue in accordance with law.

[11]. Accordingly, the order dated 20.04.2015 passed by the trial Court is set aside and the case is remanded back to the trial Court with direction to decide the same afresh in view of aforesaid observations made after providing reasonable opportunities to both sides in accordance with law.

[12]. Revision petition stands disposed of.

September 27, 2016

*Atik*

**(RAJ MOHAN SINGH)  
JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No