

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 552 of 2016

Date of Decision: 27.05.2016

Darshan Singh Soni and Another

... Petitioner(s)

Versus

Smt. Rita Dhanda

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Rajinder Kumar Singla, Advocate
for the petitioner(s).

Mr. Rajinder Pal Singh Rana, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting aside order dated 15.12.2015, passed by learned Civil Judge (Senior Division), Jalandhar, whereby the Court below granted leave to defend to the petitioners subject to the condition that they will furnish surety of amount equivalent to the cheques in dispute.

Learned counsel for the petitioners, while assailing the said order, submitted that the Court below fell in error by imposing such a condition while granting leave to defend because the Court found that there was plausible defence with the defendants to defend the suit filed by the

respondent under Order 37 CPC and in that case unconditional permission was required to be given and the said order be modified to that extent. On this point, reliance was placed upon the judgment rendered by the Hon'ble Apex Court in case *M/s Mechalec Engineers and Manufacturers v. M/s Basic Equipment Corporation* 1977 AIR (SC) 577 and view taken by this Court in *M/s Guru Nanak Paper Mills Private Limited and Others v. M/s Ravi Sons Partnership Concern Industrial Area, Chandigarh* 1989(2) PLR 277.

Learned counsel for the respondent submitted that the Court has granted leave to defend to the petitioners and rightly imposed the condition, though petitioners did not disclose equitable defence. As per respondent, the present case is based on cheques, which were issued for consideration. The cheques were legal and valid documents and petitioners already admitted their signatures thereon. Otherwise also, there is presumption of cheques, being negotiable instrument, having been issued for consideration unless contrary is proved.

Learned counsel for the respondent also submitted that application Under Order 38 CPC read with Order 37 Rule 7(2) CPC for arrest of defendant No.2 before the judgment and for issuing orders of attachment of House No. 974, Urban Estate, Phase-2, Jalandhar on the ground that liability against the defendants is on the basis of cheques. Defendants already removed their household articles from the first floor of the house and they were in process of shifting to the place not known to the respondent with the object to obstruct or delay the execution of the decree.

In that case, plaintiff would suffer an irreparable loss and in view of that,

the Court below had passed an order for furnishing surety of the amount equivalent to the cheques in dispute.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the Court below has rightly exercised its discretion vested in it while granting leave to defend and at the same time, thereby imposing condition of furnishing surety equivalent to the cheques' amount. In this case, respondent/plaintiff had filed an application under Order 38 CPC read with Order 37 Rule 7(2) CPC for attachment of the property before the judgment and for their arrest and detention so as to secure the satisfaction of the decree likely to be passed against them. The Court was convinced on that point and as such imposed the condition to give surety. As per provisions of Order 37 Rule 3(5) CPC, leave to defend may be granted to the defendant unconditionally or upon such terms as may appear to the Court or Judge to be just. On these facts, the facts of the present case are certainly distinguishable from the facts of the judgment rendered by the Hon'ble Supreme Court in case *M/s Mechalec Engineers and Manufacturers v. M/s Basic Equipment Corporation (supra)* and view taken by this Court in case *M/s Guru Nanak Paper Mills Private Limited v. M/s Ravi Sons Partnership Concern Industrial Area, Chandigarh (supra)* and the Court below has rightly exercised its discretionary power by passing the impugned order.

Resultantly, present petition, being devoid of any merit, stands dismissed.

(Shekher Dhawan)
Judge

May 27, 2016