IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.2796 of 2016
Date of Decision: 13.12.2017

Sandeep Kumar

.....Petitioner

Vs

Satpal

....Respondents

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

Present: Mr. S.P. Soi, Advocate
for the petitioner.

Mr. Malkeet Singh, Advocate
for the respondent.

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RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred against the order dated 21.03.2016 passed by the Civil Judge (Jr. Divn.) Nakodar whereby an application for leave to defend the summary suit under Order 37 CPC was allowed.

[2]. Brief facts are that the plaintiff/petitioner filed a suit under Order 37 CPC for recovery of Rs.28,500/- i.e. Rs.25,000/- as principal amount and Rs.3500/- as interest @ 12% per annum from 02.10.2014 to till date on the basis of undertaking dated 02.10.2014 executed by the defendant in favour of the

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plaintiff, together with costs of the suit and *pendente lite* interest. The summons of the suit were issued on 22.01.2016 in the prescribed form. Defendant was required to move the application for leave to defend the suit within 10 days from the date of receipt of the summons, which were served upon him on 27.01.2016.

[3]. Under Order 37 Rule 3(5) CPC the defendant was to apply for leave to defend at any time within 10 days from the service of such summons by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend the suit. Period of 10 days expired on 06.02.2016. The defendant filed an application on 20.02.2016 for leave to defend the suit. In the application, the defendant denied borrowing any amount from the plaintiff, rather defendant pleaded that one Sital of village Rangra, Tehsil Nakodar borrowed a sum of Rs.15,000/- from the plaintiff by keeping his motorcycle as security. The defendant stood guarantor for Sital. Plaintiff took the blank stamp paper of Rs.50/- from the defendant and took signature of the defendant over it and thereafter the same was misused in the form of affidavit in a fraudulent manner. The suit has not been filed on the basis of any pronote or receipt and the affidavit executed was not a negotiable instrument.

[4]. On 01.03.2016, the plaintiff filed reply to the aforesaid

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application and took plea of limitation in the reply. The filing of application on 20.02.2016 was time bared as the same was beyond the statutory period of 10 days of the service of the defendant under Order 37 Rule 2 CPC. On 01.03.2016 itself, the defendant filed another application for condonation of delay for improving former application. The said application was moved under Order 37 Rule 7 CPC.

[5]. I have heard the submissions made by learned counsel for the parties.

[6]. Perusal of the application would show that the defendant is an illiterate person and could not understand the import of the specific provision. The trial Court by way of impugned order condoned the delay while exercising the power under Order 37 Rule 7 CPC. The trial Court observed that although the defendant was under legal obligation to appear in the Court and move required application within 10 days of his service, but he could not do so due to lack of knowledge of legal presumption of law. The trial Court also observed that the defendant has a substantial defence and there is a triable issue in the matter. Taking into consideration the aforesaid facts, the trial Court proceeded to condone the delay.

[7]. Order 37 Rule 2 CPC deals with institution of summary

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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."

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[8]. 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.

[9]. 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

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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.

[10]. 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.

[11]. Defendant filed the application under Order 37 Rule 3(5) CPC on 20.02.2016, firstly with a delay of 14 days in filing

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the application and at the time of filing of the same, even no application for condonation of delay was moved. Plaintiff filed reply to the application on 01.03.2016 and then the defendant filed the application for condonation of delay. In the absence of any application for condonation of delay, the application dated 20.02.2016 filed by the defendant was not maintainable. There was further delay of 11 days in moving the application for condonation of delay on 01.03.2016.

[12]. The failure on the part of the defendant in entering appearance within 10 days would have enabled the trial Court to pass a decree. A valuable right has crystallized in favour of the plaintiff when there was no appearance on behalf of the defendant within 10 days. The appearance of the defendant was delayed and the application was not accompanied by any application for condonation of delay. On being pointed out that the application was barred by limitation, the defendant became conscious and then moved the application for condonation of delay. Order 37 CPC is a special provision and the defendant allowed the plaintiff to take benefit of the same by not filing any application for leave to defend the suit within the statutory period of 10 days. No triable issue was raised by the defendant within the period prescribed. Order 37 Rule 3(7) CPC is applicable only where sufficient cause is shown by the

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defendant in moving the application in entering appearance and applying for leave to defend the suit. In the instant case, there was delay of 14 days in appearance of the defendant and no sufficient cause was shown on such appearance by moving the application with delay. It was further delayed by 11 days when application for condonation of delay was filed on 01.03.2016 after the plaintiff took specific objection to the application. In my considered opinion, the defendant cannot be allowed to take benefit of Order 37 Rule 3(7) CPC.

[13]. In view of aforesaid observations, I deem it appropriate to set aside the impugned order dated 21.03.2016 passed by the Civil Judge (Jr. Divn.) Nakodar. Revision petition is allowed dismissing the application under Order 37 Rule 3 CPC for grant of leave to defend the suit.

December 13, 2017 **(RAJ MOHAN SINGH)**
Atik **JUDGE**
Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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