

CR No. 7930 of 2016 (O&M)
DECIDED ON: MARCH 08, 2017

.....PETITIONER

VERSUS

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

JASPAL SINGH, J

Through this instant petition preferred under Article 227 of the Constitution of India, petitioner has sought the quashing of impugned order dated August 08, 2016 (Annexure P-3), passed by learned Additional Civil Judge (Sr. Division), Rohtak whereby, an application for leave to defend filed by the petitioner/defendant has been allowed subject to furnish his security.

The facts giving rise to the instant petition are that respondent/plaintiff filed a summary suit under Order XXXVII of the Code of Civil Procedure (for short 'Code') for recovery of an amount of ₹29,16,000/- alleging that the petitioner/defendant is in need for money for starting partnership in ANM College, Karnal and requested for a loan of ₹18,00,000/- to which the respondent/plaintiff agreed and handed over an amount of ₹18,00,000/- in the presence of witnesses, which was payable on demand

alongwith interest @ 2% per month w.e.f. October 28, 2013 till the date of actual realization. In this regard, a pronote and receipt was executed in presence of respondent/plaintiff as well as witnesses, which is scribed by Vineet Sagar, Advocate at the instance of petitioner/defendant. Since the payment was not paid on demand raised by the respondent/plaintiff, suit for recovery under Order XXXVII of the Code was instituted.

In response to the notice, petitioner/defendant moved an application seeking leave to defend the suit, which was allowed vide impugned order but subject to furnish security.

While assailing the impugned order, it has been contended by learned counsel for the petitioner that condition to furnish security was imposed by learned trial Court in a most illegal and arbitrary manner, that too without considering the facts of the case. The learned trial Court has failed to appreciate that the petitioner/defendant has specifically stated that neither any transaction of borrowing the loan of ₹18,00,000/- had taken place between the parties nor the respondent/plaintiff has the resources and capability of advancing such a huge loan. Thus, the impugned order is absolutely illegal, arbitrary and erroneous to the extent of putting the condition for furnishing security while allowing the application for leave to defend the suit.

This Court has given an anxious thought to the afore-said submissions made by learned counsel for the petitioner/defendant but find the same to be without any legal weight.

There is a clear cut stand of the respondent/plaintiff that petitioner/defendant was in need of money to the tune of ₹18,00,000/- for starting partnership in ANM College, Karnal and made a request to him

(respondent/plaintiff). He exceeded to his request and handed over a sum of ₹18,00,000/- as loan payable on demand alongwith interest @ 2% per month from the date of its receipt till its actual realization. Petitioner/defendant has also executed a pronote and receipt dated October 28, 2013 in this regard. Petitioner/defendant has challenged the resources and capability of respondent/plaintiff and has denied the transaction of borrowing the loan. To secure the interest of respondent/plaintiff imposition of condition to furnish security can neither be termed to be arbitrary nor illegal. Rather it is legally as well as factually justified, especially in view of the fact that the suit has been filed under Section XXXVII of the Code and has to be dealt with and disposed of in a summary nature.

Thus, there is no illegality or perversity in the impugned order. Rather, this court is of the considered view that instant petition is nothing but a device adopted by the petitioner/defendant to abide with the condition to furnish the security.

Accordingly, finding no merit in the instant petition, the same is dismissed.

MARCH 08, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*