

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

1. Civil Revision No.8245 of 2016
Date of Decision: 22.12.2017

Som Parkash @ Som LalPetitioner
Vs
Hakam SinghRespondent

2. Civil Revision No.8670 of 2016

Som ParkashPetitioner
Vs
Amrit LalRespondent

3. Civil Revision No.2179 of 2017

Naib SinghPetitioner
Vs
Tejinderpal SinghRespondent

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

Present:Mr. Sherry K. Singla, Advocate
for the petitioner(s).

Mr. H.P.S. Ghuman, Advocate &
Mr. Abhishek Singla, Advocate
for the respondent(s).

RAJ MOHAN SINGH, J.

[1]. Vide this common order Civil Revision Nos.8245, 8670
and 2176 of 2017 are being disposed of as similar controversy
is involved in all these case.

[2]. Petitioner(s) has challenged the orders dated

22.09.2016 and 20.09.2016 passed by the Addl. Civil Judge (Sr. Divn.) Nabha and order dated 14.02.2017 passed by the Civil Judge (Jr. Divn.) Talwandi Sabo whereby leave to defend was granted in favour of the defendant/petitioner(s) under Order 37 CPC subject to furnishing surety.

[3]. As per the brief facts culled out from CR No.8245 of 2016, a suit for recovery under Order 37 CPC was filed against the defendant/petitioner. Petitioner filed an application for leave to defend the suit unconditionally on the ground that the plaintiff has filed the suit in connivance with the marginal witnesses. Plaintiff was known to the defendant and he came to the defendant and told him that he wanted to give an amount of Rs.1,82,000/- to someone on interest and he did not know how to fill the *pronote* and receipt. Defendant asked him to pay the said amount to him. Plaintiff suggested the defendant only to fill the *pronote* and receipt as he wanted to show the same to his family members. Plaintiff further suggested that his signatures as well as names of the witnesses will be obtained/written on the *pronote* and receipt after sometime at the time of advancement of amount on interest. Plaintiff also suggested that he will bring witnesses with him at the time of payment of loan and he took the written drafts of *pronote* and receipt with him as the defendant had a good faith on the plaintiff. When the plaintiff

did not turn up, the defendant approached the plaintiff and the plaintiff told him that he could not arrange money and that is why he did not turn up to call him. He assured the defendant that he will make the arrangement of money and then will contact the defendant. When the plaintiff did not turn up again, the defendant again contacted the plaintiff and the plaintiff took up the stand that while washing the clothes the *pronote* and receipt have been washed away and the plaintiff will come to him to show that *pronote* and receipt did not show anything about the payment to be made to the defendant. Defendant agreed to the words of the plaintiff in good faith. After receipt of summons from the Court the defendant came to know that the plaintiff has filed the suit for forging his signatures and by getting the signatures of marginal witnesses of his choice. The defendant never put his signatures on the alleged *pronote* and receipt and the same were without consideration.

[4]. In pith and substance the defendant has denied his signatures. Defendant submitted that if the witnesses were present and had the money been advanced to the defendant on 12.11.2014 (the date written on the alleged *pronote* and receipt), then the plaintiff must have obtained the signatures of the defendant on receipt and the names of the witnesses must have been written with the writing of the defendant. Defendant further

alleged that names of marginal witnesses and their addresses were not written on the alleged receipt and the signatures of the witnesses were written with different ink as no witness was present when the drafts of *pronote* and receipt were prepared. No payment was made to the defendant on the alleged *pronote* and receipt and the defendant never executed any *pronote* and receipt in favour of the plaintiff on 12.11.2014.

[5]. After appreciating the submissions made by the parties, the trial Court granted leave to defend the suit however subject to furnishing of security by the defendant(s) equivalent to the amount of the suit.

[6]. Learned counsel for the petitioner(s) submitted that once the trial Court has found that there are triable issues involved in the suit, then the condition of furnishing security equivalent to the amount involved in the suit cannot be imposed.

[7]. Learned counsel by placing reliance upon **Milkhiram (India) Pvt. Ltd. vs. Chamanlal Bros., AIR 1965 Supreme Court 1698;** **M/s Mechalec Engineers and Manufacturers, 1976(4) SCC 687;** **M/s Sunil Enterprises & Anr. vs. SBI Commercial & International Bank Ltd., 1998(5) SCC 354;** **Babbar Vision India Pvt. Ltd., vs. Rama Vision India Ltd., 2003(1) R.C.R. (Civil) 226;** **Defiance Knitting Industries Pvt.**

Ltd. vs. Jay Arts, 2006(4) R.C.R.(Civil) 493; M/s Uma Shankar Kamal Narain & Anr., vs. M/s M.D. Overseas Ltd., 2007(2) R.C.R. (Civil) 585; State Bank of Hyderabad vs. Rabo Bank, 2015(4) R.C.R. (Civil) 968 and Megh Singh vs. Ashok Kumar, 2016(2) PLR 853 contended that if the defendant satisfied the Court that he has a good defence to the claim on merits, the defendant is entitled to unconditional leave to defend. If the defendant raises a triable issue indicating that he has a fair or *bona fide* or reasonable defence although not a possible good defence, the defendant is entitled to unconditional leave to defend. If the defendant discloses such facts as may be deemed sufficient to entitle him to defend that is to say, although the affidavit does not positively and immediately make it clear that he had a defence, yet shows such a state of facts as leads to the inference that at the trial of the action, he may be able to establish a defence to the plaintiff's claim, the Court may impose conditions as at the time of granting leave to defend, the conditions being as to the trial or mode of trial, but not as to payment into Court or furnishing security. If the defendant has no defence or if the defendant has *sham* or illusory or practically moonshine, the defendant is not entitled to leave to defend the suit. If the defendant has no defence or the defence set up is illusory or *sham* or practically moonshine, the

Court may show mercy to the defendant by enabling him to try to prove a defence, but at the same time protect the plaintiff by imposing the condition that the amount claimed should be paid into the Court or otherwise secured.

[8]. Learned counsel also contended that the Courts dealing with summary trials should act very carefully in taking note of interest of both the parties. Merely on the ground that the defendant may resort to prolonged litigation by putting forth untenable and frivolous defences, grant of leave to defend cannot be declined. At the same time the Court must ensure that the defendant raises a real issue and not a *sham* one. The Court cannot reject on the ground of implausibility or inconsistency, if the defendant satisfies the Court that he has a good defence to claim on its merits, the plaintiff is entitled to leave to sign the judgment and the defendant is entitled to unconditional leave to defend. If the defendant raises a triable issue indicating that he has a fair or *bona fide* or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment and the defendant is entitled to conditional leave to defend.

[9]. On the other hand, learned counsel for the respondent (s) by relying upon **Ramesh Rani vs. Harash Malhotra, 2000 (1) R.C.R. (Civil) 503; M/s Build Tech. vs. Rakesh Jain, 2001**

(3) R.C.R. (Civil) 185; Baljinder Singh vs. Jagan Nath, 2004
(3) R.C.R. (Civil) 163; Jaswinder Singh vs. Kabal Singh,
2006(2) CivCC 46; Southern Sales & Services & Ors. vs.
Sauermilch Design & Handels GMBH, 2008(4) R.C.R. (Civil)
729; Mukesh Kumar vs. Bhopal Singh & Ors., 2009(2) CivCC
542; Harvinder Singh vs. Avtar Singh, 2010(44) R.C.R. (Civil)
765; Rattan Singh Ranga vs. Ram Karan, 2015(4) PLR 686;
Darshan Singh Soni and another vs. Smt. Rita Dhanda, 2016
(4) PLR 661 and Barjinder Kumar vs. Mohinder Pal Bhatia,
2016(4) PLR 20 contended that the Court shall justify in imposing conditions when there was serious doubt in the defence raised by the defendant. The discretion has to be exercised on sound judicial principles. If the defendant has no defence or defence is illusory or *sham* the Court can show mercy for defendant by enabling him to try to prove the defence, but at the same time protect the plaintiff by imposing the condition that the amount should be paid into the Court or otherwise secured. The defendant has admitted the filling of the *pronote* and receipt, therefore, there was a presumption that it was executed for consideration. Mere denial of execution of promissory note is not enough to grant leave to defend without condition of security/surety. The validity of defence could be examined only during the trial. The order passed by the Court

having jurisdiction cannot be questioned in revision, even if the wrong order has been passed by the Court having jurisdiction to pass it, unless error of jurisdiction is pointed out. When the case for leave to defend is made out, the defendant cannot be burdened with condition of furnishing security, but even the plaintiff/respondent could seek attachment of defendant's property before judgment under Order 38 Rule 5 CPC and the order of furnishing security can be modified to one for attachment before judgment.

[10]. Learned counsel further submitted that defendant made bald assertion that the *pronote* and receipt were without consideration and were result of forgery and misrepresentation. In such eventuality imposition of condition of furnishing security cannot be faulted with.

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

[12]. There is no dispute with regard to the case law cited by both the parties in given facts and circumstances of those cases. In the instant cases, issues have already been framed and the plaintiff's evidence is in progress. Since the Court has already framed triable issues, therefore, at this stage, it would not be proper to allow security to be furnished for progress of

the suit.

[13]. Even in case of **State Bank of Hyderabad's** case (supra), the Hon'ble Apex Court after relying upon ratio of **Machelec Engineers & Manufacturers** and **Milkhiram (India) (P). Ltd.'s** cases (supra), **Neebha Kapoori vs. Jayantilal Khandwala, 2008(3) R.C.R. (Civil) 816**, **Ram Duggal vs. Ramesh Kumar Bansal, 1991 Suppl.(1) SCC 191**; **Santosh Kumar vs. Bhai Mool Singh, AIR 1958 SC 321**; **Sunil Enterprises'** case (supra) and **T. Sukhender Reddy vs. M. Surender Reddy, 1998(3) ALD 659** held that in cases where the defendant has raised the triable issues or a reasonable defence, the defendant is entitled to unconditional leave to defend. Leave is granted to defend even in cases where the defendant upon disclosing a fact, though lacks the defence, but makes a positive impression that at the trial the defence would be established to the plaintiff's claim. Only in cases where the defence set up is illusory or *sham* or practically moonshine, the plaintiff is entitled to leave to sign judgment. The Court further held that merely on the ground that the defendant may resort to prolonged litigation by putting forth untenable and frivolous defence, grant of leave to defend cannot be declined. Only thing is that the Court must ensure that the defendant raises a real issue and not a *sham* one. The Court cannot reject the defence

on the ground of implausibility or inconsistency. Since the trial has already progressed after framing of triable issues, therefore, in my considered opinion the impugned orders in the present revisions petitions to the extent of granting conditional leave is not sustainable.

[14]. For the reasons recorded hereinabove, the impugned orders dated 22.09.2016, 20.09.2016 passed by the Addl. Civil Judge (Sr. Divn.) Nabha and order dated 14.02.2017 passed by the Civil Judge (Jr. Divn.) Talwandi Sabo are set aside and the revision petitions are hereby accepted.

December 22, 2017

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No