

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

Civil Revision no.4949 of 2018

Date of Decision:14.09.2018

Som Parkash

.....Petitioner

Vs.

Dharminder Singh

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Saurabh Kaushik, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (Oral)

In response to the notice issued, Mr.Sandeep Verma, Advocate, has appeared and has filed his *vakalatnama* on behalf of the respondent. He submits that though the judgment of the Supreme Court as was relied upon by the trial Court to impose a condition of furnishing a surety/security by the petitioner before granting leave to defend the suit filed under the provisions of Order 37 of the CPC, no longer holds the field, however, the parameters laid down in the subsequent judgment of the Apex Court in “**IDBI Trusteeship Services Ltd. vs. Hubtown Ltd.**” AIR 2016 SC 5321, also would not entitle the petitioner to defend the case without furnishing adequate surety/security. In the said judgment, the following parameters have been laid down:

“18. Accordingly, the principles stated in paragraph 8 of Mechelec's case will now stand superseded, given the amendment of O.XXXVII R.3, and the binding decision of four judges in Milkhiram's case, as follows:

- a. If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit;
- b. if the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend;
- c. even if the defendant raises triable issues, if a doubt is left with the trial judge about the defendant's good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security;
- d. if the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.
- e. if the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith;
- f. if any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.”

Learned counsel for the petitioner on the other hand submits that the petitioners' case would be covered if not by clause (a) of the aforesaid parameters then by clause (b) thereof, because the petitioner had definitely a fair and reasonable defence as regards any money lent to him by the respondent/plaintiff, which he seeks to get recovered from the petitioner on the basis of a promissory note alleged to have been executed by the petitioner in favour of the respondent, but wholly denied by the

petitioner.

Learned counsel submits that the petitioner does not belong to the village of the respondent/plaintiff, with the petitioner residing in Nabha Town and the respondent/plaintiff residing in village Gobindpura, though in Tehsil Nabha.

He further submits that the petitioner claims that he does not even know the respondent\plaintiff and consequently the question of the respondent loaning a sum of Rs.6,22,000/- to him by wholly a cash transaction would not arise.

He further submits that the petitioner wholly denies his signatures on the promissory note.

As regards the surety directed to be furnished by the trial Court, he submits that the only property in the name of the petitioner is his sole residential house, by mortgaging which only can he furnish surety bonds to the tune of Rs.6,50,000/-, but with such property not attachable even in execution proceedings in terms of Section 60(1)(ccc) of the Code of Civil Procedure, 1908, applicable to the State of Punjab.

Having considered the arguments, though, of course, mortgaging the property with a bank in order to furnish security to the court is something not at all within the ambit of Section 60 of the CPC, the said provision being relatable to execution proceedings, however, learned counsel is obviously trying to draw an analogy as regards the underlying principle.

Be that as it is, even on merits, though the trial Court in the impugned order has held that the defence taken by the petitioner/

defendant is “improbable, moonshine and illusory,” in my opinion the petitioner has raised triable issues by way of a reasonable defence that he wishes to lead before that Court and hence his case would be covered by clause (b) of the parameters laid down by the Supreme Court in the **IDBI Trusteeship's** case (supra).

Consequently, while observing that the aforesaid observation of this Court would obviously not be considered to be any opinion on the actual merits of the dispute, which naturally would be adjudicated upon by the trial Court wholly as per evidence led before it, it is considered appropriate that this petition be allowed to the extent that the petitioner be permitted to lead defence without furnishing any surety.

In any case the trial being a summary trial, the trial Court would dispose of the suit of the respondent/plaintiff after appraising evidence within a period of six months.

However, if the petitioner/defendant attempts to delay proceedings in any manner, the trial Court after recording that finding, if it finds such delay is on account of the defendants' contention (as regards non-execution of the promissory note), not being supported by evidence that he, purportedly seeks to lead, his evidence can, naturally, be closed, by an order of that court, after a reasonable time, keeping in view the 6 month period given in this order.

Disposed of.

(AMOL RATTAN SINGH)
JUDGE

September 14, 2018.
dharamvir/dinesh