

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.5391 of 2015
Date of Decision: April 04, 2018

Gamdoor Singh

...Petitioner

Versus

Balveer Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

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

Mr.Munish Bansal, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Petitioner is aggrieved of the impugned order dated 17.7.2015, whereby while granting leave to contest the suit filed under Order XXXVII of the Civil Procedure Code seeking recovery of amount of ₹11,62,400/-, had imposed a condition of furnishing surety bonds in the sum of ₹5,00,000/-.

Mr.Sherry K.Singla, learned counsel appearing on behalf of the petitioner submits that the aforementioned condition is not in consonance with the settled proposition of law that when the Court arrives at a categorical finding that the contents of the application seeking leave to defend give rise to a triable issue and it would not be moonshine, the surety cannot be imposed. In support of his contention, relied upon the ratio decidendi culled out in Mechelec Engineers & Manufacturers V/s Basic Equipment Corporation, 1976 (4) SCC 687. He, thus, urges this Court for setting-

aside the impugned order.

Mr.Munish Bansal, learned counsel for the respondent submits that the application seeking leave to defend contained general allegations and no specific point has been raised giving rise to some triable issue. It is in that background of the mater, the Court has imposed the surety. No harm and prejudice would be caused to the petitioner as the suit is at the stage of defendant's evidence.

I have heard the learned counsel for the parties and appraised the paper book.

The impugned order reads thus:-

“1. Arguments on leave to defend hear. It is argued by Ld.Counsel for the defendant that pronote and receipt are forged and fabricated document and that the defendant had never taken any amount from the plaintiff, he has further denied his signatures on the documents. So he has requested that there are sufficient grounds for granting him leave to defend and without any condition. On the other hand, Ld.Counsel for the plaintiff has prayed for dismissal of application.

2. After hearing arguments and going through material on file, this court has observed that the plaintiff has sought recovery of Rs.11,62,400/- by way of present suit and the defendant has totally denied the execution of this document, so certainly there is a triable issue and an opportunity should be given to the defendant to put forward his defence, but at the same time, justice demand that the interest of plaintiff should be simultaneously protected. And hence keeping in view interest of both the parties, the leave to defend of the defendant is allowed subject to his furnishing surety bonds in the sum of Rs.5 lacs. Now to come up on 24.08.2015 for furnishing bonds.”

The law laid down with regard to granting leave to defend is no longer *res integra*. Once the trial Court has already granted the leave to the petitioner-defendant to contest the suit and the suit has reached at the stage of evidence, furnishing of surety of ₹5,00,000/-, in my view, is totally against the ratio decidendi culled out in the judgment cited supra. The averments in the application, in my view, do not create any doubt for imposition of the condition and the surety can always be imposed in rarest of rare case.

For the reasons stated above, the impugned order qua imposition of surety is set-aside and rest of the same is upheld. Revision petition stands allowed.

April 04, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No