

(117) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5044 of 2018

Date of decision: 02.11.2018

Sheela Devi and others

.... Petitioners

Versus

Balwant Singh

.... Respondent

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present : Mr. S.S. Sahu, Advocate for the petitioners.

Mr. Saurabh Bajaj, Advocate for the respondent.

B.S. Walia, J.

[1] Challenge in the revision petition under Article 227 of the Constitution of India is to order dated 24.04.2018 (Annexure P-1) passed by the learned Addl. Civil Judge (Sr. Div.) – cum – Sub-divisional Judicial Magistrate, Tohana, allowing the application filed by the petitioners/defendants seeking leave to defend the suit subject to deposit of 50% of pronote amount in the Treasury, on the ground that the onerous condition to deposit 50% of the pronote amount ought not to have been imposed since the petitioners had categorically denied the execution of the pronote by their predecessor-in-interest as also of his having borrowed Rs.2,87,216/-.

[2] The stand taken up by the petitioners/defendants was that the alleged pronote was fake because no such amount was ever received by Dheera Ram, predecessor-in-interest of the petitioners and that in the circumstances no condition could be imposed while granting leave to defend

the case as the same would amount to depriving the petitioners/defendants to contest the case on merit and in the case of a recovery suit, the petitioners/defendants could not be compelled to deposit a hefty amount without deciding the case on merit.

[3] Per contra, learned counsel for the respondent has supported the impugned order and has reiterated the reasoning for the passing of the same.

[4] I have considered the submissions of learned counsel for the parties and am of the view that for the reasons as are recorded hereunder, the revision petition is bereft of merit and is, accordingly, liable to be dismissed.

[5] Hon'ble the Supreme Court in **IDBI Trusteeship Services Ltd. v. Hubtown Ltd., 2017 (1) SCC 566** laid down the following principles.

Relevant extract of the same is reproduced as under:-

“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 Accordingly, the principles stated in paragraph 8 of Mechelec’s case will now stand superseded, given the amendment of O. XXXVII R.3, and the binding decision of four Judges in Milkhiram’s case, as follows: If the defendant satisfied the Court that he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;

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;

Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendants 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;

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.

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;

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.”

[4] A perusal of the aforementioned extract of the decision of Hon’ble the Supreme Court in IDBI Trusteeship Services Ltd’s case (Supra) reveals that if the defendant raises triable issues and a doubt is there in the mind of the learned 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, while taking care to ensure that the object of the provisions to assist expeditious disposal of commercial causes is not defeated as also that such

security and further that 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 and where 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 requisite in the facts of the case.

[5] In the case in hand, it is the stand of the petitioners/defendants that their predecessor-in-interest did not borrow the amount of Rs.2,87,216/- from the respondent/plaintiff as alleged in the plaint, therefore, the question of agreeing to pay interest @ 24% per annum did not arise and said predecessor-in-interest of the petitioners/defendants never executed the alleged pronote or receipt on 01.04.2015 in favour of the respondent/plaintiff and no consideration as alleged in pronote and receipt passed to the respondent/plaintiff, the alleged pronote and receipt is result of fraud and the defendants-applicants are not liable. The learned trial Judge on the basis of the pleadings of the parties observed that the petitioners/defendants had not mentioned as to how fraud was played by the respondent/plaintiff, besides, it had not been clarified whether the signatures appearing in the name of their predecessor-in-interest were the signatures of their predecessor-in-interest or had been forged by the respondent/plaintiff or if said signatures were of their predecessor-in-interest then how and under what circumstances, the respondent/plaintiff succeeded in obtaining the same from their predecessor-in-interest. The learned trial Judge further observed that since the petitioners/defendants had set up a defence of alleged fraud by respondent/plaintiff, therefore, there appeared no reason to the Court as to why necessary permission for leave to defend the suit should not be granted to the petitioners/defendants but at the same time, since the petitioners/defendants

had neither mentioned the particulars of fraud nor clarified as to how the fraud was played by the plaintiff/respondent, therefore, permission for leave to defend could not be granted unconditionally. Accordingly, leave to defend was granted subject to the petitioners' depositing 50% of the pronote amount in the treasury.

[6] It is obvious that the trial Judge felt that although defence was plausible but in view of the doubt in the mind of the trial Judge with regard to the defence put up by the petitioners/defendants while raising the plea of fraud by not mentioning as to how the fraud was played by the respondent/plaintiff nor having clarified that the signatures appearing in the name of the predecessor-in-interest were his signatures or had been forged or if the signatures were of their predecessor-in-interest then how and under what circumstances, the respondent/plaintiff had succeeded in obtaining the same from the predecessor in interest, imposition of condition of depositing 50% of the pronote amount while granting leave to defend cannot be found fault with.

[7] In somewhat similar circumstances, a Co-ordinate Bench of this Court in **Rattan Singh Ranga v. Ram Karan, 2015 (4) PLR 686** by relying upon a decision of Supreme Court in **M/s Sunil Enterprises v. SBI Commercial and International Bank Limited, 1998 (5) SCC 354** granted leave to defend the case to the petitioner subject to furnishing security equal to the amount sought to be recovered by the respondent. Relevant extract of the aforementioned decision is reproduced as under:-

*“In **Defiance Knitting Industries Pvt. Ltd. v. Jay Arts, 2006 (4) RCR (Civil) 493** also it is held by Hon'ble Supreme Court that where the Court entertains a genuine doubt on the question as to whether the defence is genuine or sham or whether it raises a triable issue or*

not, the Court may impose conditions in granting leave to defend. In this case, the petitioner had sought leave of the Court to defend the case stating that he had not borrowed the amount and the signatures on the pronote are forged. Mere denial of execution of promissory note is not enough to grant leave to defend without imposition of condition of security. Considering the said facts, learned trial Court rightly granted leave to defend the case to the petitioner subject to his furnishing security equivalent to the amount sought to be recovered by the respondent. The security of the amount directed to be furnished cannot be said to be on the higher. Learned counsel for the petitioner failed to demonstrate any error or law in the impugned order passed by learned trial Court. Finding no illegality or perversity in the impugned order passed by learned trial Court warranting intervention, this petition is dismissed.”

[8] In the light of the position as noted above, I do not find any infirmity with the order passed by the learned trial Judge granting conditional leave to defend.

[9] The revision petition being bereft of merit is, accordingly, dismissed.

(B.S. Walia)
Judge

02.11.2018
amit

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No