

CR No.7652 of 2016

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

CR No.7652 of 2016

Date of decision:15.05.2018

Deepak Kumar Bhardwaj

... Petitioner

Vs.

Dalip Singh Yadav and others

... Respondents

CR No.7656 of 2016

Deepak Kumar Bhardwaj

... Petitioner

Vs.

Dalip Singh Yadav and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. J.S.Rozera, Advocate
for the petitioner.

Mr. Ram Chander, Advocate
for the respondents.

AMIT RAWAL J.

This order of mine shall dispose of two revision petitions bearing Nos.7652 and 7656 of 2016 at the instance of the petitioner-plaintiff, whereby, the trial Court granted time to the respondent-defendants to file appearance in a suit filed under Order 37 and as well as against the observations with regard to granting permission to appear beyond the time prescribed under Order 37 of Code of Civil Procedure (in short "CPC").

Mr. J.S. Rozera, learned counsel appearing on behalf of the

petitioner-plaintiff submitted that suit under Order 37 of CPC for recovery of ₹74,750/- was filed. Defendants No.2 and 3 appeared and filed two applications for taking defence of appearance and for condonation of delay and the case was adjourned to 02.08.2016 for filing reply. The aforementioned fact is evident from the orders dated 02.08.2016 (Annexures P-3 and P-4). On 10.08.2016, the trial Court heard the arguments on the applications and case was fixed for 23.08.2016. On 23.09.2016, the petitioner came to know that the trial Court had announced the order on the same very day after lunch granting the permission to the defendants to appear and also granted leave to file written statement. In fact, no arguments on said application were addressed. Even otherwise, as per the provisions of sub-clauses (4) and (5) of Rule 3 of Order 37 of CPC on appearance of the defendants, the plaintiff is required to serve the defendants a summon for judgment in Form No.4A in Appendix B, returnable not less than ten days from the date of service supported by an affidavit and the defendants at any time within ten days from the service of such summons for judgment, required to apply for leave to defend. The aforementioned provisions have not been adhered to and therefore, the order under challenge is fallacious.

On the other hand, Mr. Ram Chander, learned counsel appearing on behalf of the respondent-defendants submitted that provisions of sub-clause 7 of Rule 3 of Order 37 of CPC empower the Court to enlarge the powers by giving liberty to the party to appear beyond 10 days as referred to above. Since the contents of the application seeking leave to

defend gave triable issue, therefore, the Court below rightly exercised the power in granting the leave without any demur, thus, order under challenge is perfectly legal and justified, much less does not call for any interference.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Rozera, for, sub-clause 7 of Rule 3 of Order 37 of CPC empowers the Court to enlarge the time on sufficient cause for the defendants to appear and apply for leave to defend. For the sake of brevity, sub-clause 7 reads as under:-

*“3. **Procedure for the appearance of defendant** (7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.”*

Since the petitioner-plaintiff has raised the triable issue with regard to the alleged transaction for recovery of amount, the Court below on the basis of aforementioned pleadings, in my view, correctly granted the leave to contest the suit, for, stand taken by the defendants was that they already paid an amount of ₹75,000/- against ₹1,49,500/-. It is yet to be proved whether the plaintiff is entitled to the amount claimed in the suit or not.

The aforementioned finding, in my view, cannot be said to be illegal and perverse enabling this Court to form a different opinion than the one arrived at by the Court below.

No ground is made out for interference in the impugned order.
Resultantly, the revision petitions stand dismissed.

(AMIT RAWAL)
JUDGE

May 15, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No