

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

CR No.8688 of 2017
Date of decision : 02.11.2018

Atma Singh (since deceased) and others

.... Petitioners

Versus

Jaswant Singh

.... Respondent

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

Present : Mr. Kamal Narula, Advocate for the petitioners.
Mr. B.S. Chahal, 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 01.09.2017 passed by the learned Addl. Civil Judge (Sr. Div.), Ferozepur whereby the application filed by the LR's of the deceased/petitioner-defendant Atma Singh for leave to defend the suit unconditionally, was dismissed by granting conditional leave to defend the suit subject to furnishing surety bonds in the sum of ₹ 2,00,000/- with one surety in the like amount.

[2] Brief facts of the case leading to the filing of the revision petition are that the respondent/plaintiff had filed a suit for recovery of ₹ 1,62,060/- i.e. ₹ 1,11,000/- as principal amount and ₹ 51,060/- as interest thereon on the ground that Atma Singh (since deceased) had taken a loan of ₹ 1,11,000/- from him in the month of July 2014 for which he had executed a pronote and receipt in his favour on 24.07.2014. An application was filed

defend by taking up the plea that during his life time Atma Singh never approached the respondent/plaintiff for loan nor executed any pronote and receipt in favour of the respondent/plaintiff and further that the respondent/plaintiff had not complied with the procedure under Order 37 CPC for service of summons under Order 37 Rule 2 CPC. It was contended that Atma Singh (deceased) husband of Gurmit Kaur had never received any amount from the respondent/plaintiff and that it was also not disclosed by the respondent/plaintiff as to how he knew Atma Singh (deceased) and for what purpose Atma Singh (deceased) had taken loan from him, that the alleged suit was based on forged and fabricated documents and further that Mandeep Singh and Veerpal Kaur were minors and suit against them was not maintainable as no permission for appointment of guardian had been sought before filing the suit against them.

[3] The learned Civil Judge (Sr. Div.), Ferozepur while taking into account the stand of the petitioners/defendants that during his life time, Atma Singh had never approached the respondent/plaintiff for advancement of any loan amount nor he had executed any alleged pronote and receipt and the said pronote and receipt were forged and fabricated documents, held that a case was made out for granting leave to defend the suit as the petitioners/defendants were having a plausible defence with them but since they had not annexed any document in support of their defence in the said application, therefore, leave to defend was allowed subject to furnishing surety bonds in the sum of ₹ 2,00,000/- with one surety in the like amount.

[4] In view of the fact that the learned trial Judge harbored a doubt in her mind with regard to the defence on account of no documents having been annexed by the petitioners/defendants in support of the defence taken

interference with the order passed by the learned Civil Judge (Sr. Div.), Ferozepur granting conditional leave to defend except to the extent that since the suit was for recovery of ₹ 1,62,000/- i.e. ₹ 1,11,000/- as principal amount and ₹ 51,060/- as interest thereon on the basis of pronote and receipt dated 24.07.2014, therefore, instead of directing furnishing of surety bond in the sum of ₹ 2,00,000/- with one surety in the like amount, ends of justice would be met if the petitioners/defendants are granted leave to defend subject to furnishing surety bond to the extent of amount claimed.

[5] 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 Hon'ble the Supreme Court in **M/s Sunil Enterprises vs. SBI Commercial and International Bank Limited, 1998 (5) SCC 354** granted leave to defend the case to the petitioner subject to his furnishing surety equivalent 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.”

[6] In the light of the position as noted above, I do not find any ground warranting interference with the order passed by the learned trial Court except to the extent as noted above.

[7] Accordingly, the revision petition is disposed of in above terms.

(B.S. Walia)
Judge

02.11.2018
amit

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