

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

**CR No.5409 of 2018(O&M)
Date of Decision: 05.09.2019**

M/s Jindal Impex

.....Petitioner

Versus

Malayan Banking Berhad and anotherRespondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Sumit Mahajan, Sr. Advocate with
Mr. Amit Kohar, Advocate
for the petitioner.

Mr. Dev Mani Bansal, Advocate
for respondent No.1.

Mr. Sumit Narang, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 13.04.2018 passed by Additional District Judge, Ludhiana, wherein it was observed that written statement can only be filed if leave to defend is granted. Summons for judgment in Form No.4-A in Appendix-B were ordered to be served upon defendants No.1 and 2 and order dated 31.07.2018 passed by Additional District Judge/Commercial Court, Ludhiana, wherein the Court ruled that the summary procedure under Order 37 CPC would apply and not the

procedure prescribed under the Commercial Courts Act, 2015.

[2]. Perusal of the record would show that a civil suit under Order 37 CPC was filed by the plaintiff/respondent No.1. Petitioner was impleaded under Order 1 Rule 10 CPC in CR No.5091 of 2017 vide order dated 16.02.2018. The impleadment was declined by the trial Court vide order dated 06.07.2017 against which aforesaid revision petition was filed.

[3]. Operative part of the order dated 16.02.2018 passed by the High Court in CR No.5091 of 2017 reads as under:-

“There is another aspect of the matter. Before the petitioner could give the acceptance on 3.1.2012, the respondent-plaintiff bank stated to have made payment on 1.12.2011 to the supplier, but on going through the documents, which had been referred to during the course of the hearing, i.e., Annexure P11, the respondent-plaintiff bank had financed the amount for a period of 90 days to the seller, i.e., equivalent amount 3,73,303.43 USD by terming it to be Onshore Foreign Currency Loan (OFCL) facility. Be that as it may, I am of the view that in such scenario and backdrop of the matter, the petitioner is a proper and necessary party to be impleaded as defendant No.2 in the suit.

Resultantly, the impugned order is set-aside. As a consequence thereof, the application moved by the petitioner for impleadment is allowed. Trial Court is directed to afford an opportunity to the petitioner to file the written statement in accordance with law.

Revision petition stands allowed.

February 16, 2018
ramesh

(AMIT RAWAL)
JUDGE”

[4]. The aforesaid order was unsuccessfully assailed by the plaintiff in SLP(C) No.14128 of 2018 which was dismissed by the Hon'ble Apex Court vide order dated 19.07.2018.

[5]. Perusal of the order dated 16.02.2018 passed by the High Court would show that the application for impleadment was allowed and the trial Court was directed to offer an opportunity to the petitioner to file written statement in accordance with law. As per legal parameters, the application was to be filed in the present suit as per requirement of Order 37 CPC and its rules.

[6]. Petitioner filed the requisite application under Order 37 Rule 3 CPC on behalf of defendants No.2 and 3 before the Additional District Judge for leave to defend the suit. Additional District Judge, Ludhiana passed the order dated 11.05.2018 which reads as under-

*“Present: Sh. A.K. Jindal, Advocate for the appellant.
Sh. Ritesh Mahindra, Advocate for the plaintiff.
Sh. Parveen Garg, Advocate for defendant.*

An application under Order 37 Rule 3 CPC was filed on behalf of defendants No.2 and 3 for leave to defend the suit. Copy of the said application has been supplied to the counsel for the plaintiff today in the Court. Now reply to this application be filed by the

plaintiff on 31.05.2018.

Date of Order: 11.05.2018

Next Date: 31.05.2018

*(Kuldip Kumar Kareer)
Additional District Judge,
Ludhiana”*

[7]. In the aforesaid application, 24.09.2018 was the date fixed for consideration. Evidently, the said application has not been decided so far.

[8]. Perusal of the impugned order dated 13.04.2018 does not show in any manner that the order dated 16.02.2018 passed in CR No.5091 of 2017 has been violated, rather the Court has observed that the petitioner can file the written statement if leave to defend is granted. Leave to defend in view of order dated 16.02.2018 passed by the High Court can be granted after affording an opportunity to the petitioner to file written statement in accordance with law. Petitioner has already filed an application as per time prescribed under Order 37 Rule 3 CPC and the said application has not been decided so far.

[9]. As regards the second issue raised by learned counsel for the petitioner, the issue in my opinion, is covered by the dictum as laid down by the Division Bench of High Court (Bombay) in **Hubtown Limited Vs. IDBI Trusteeship Service Limited, 2017(4) BomCR310.**

[10]. In the instant case, before decision of CR No.5091 of

2017, proceedings of the suit were transferred to the Commercial Court.

[11]. In view of aforesaid factual position, it would be appropriate to direct the Additional District Judge/Commercial Court, Ludhiana to proceed with the pending application under Order 37 Rule 3 CPC and to make every endeavour to decide the same at the earliest in view of direction issued by the High Court in CR No.5091 of 2017 on 16.02.2018 in accordance with law.

[12]. Disposed of.

05.09.2019

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking **Yes/No**

Whether reportable **Yes/No**