

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

-.-

C.R No. 7991 of 2019

Date of decision: 06.01.2020

Hazi Mohammad Irfan

... Petitioner

Vs.

Harish Sharma

...Respondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present:- Mr. Krishan Kumar Thakur, Advocate, for the petitioner.

ALKA SARIN, J.

The present revision petition has been preferred by the defendant-petitioner on a very limited ground. Vide order dated 14.11.2019 passed by the Additional Civil Judge, Sr. Division, Ferozepur, the defendant-petitioner was allowed to defend the suit. However, the said permission was granted subject to furnishing a bank guarantee to the tune of ₹5 lakhs. The only challenge in the present petition is to the imposition of the condition of furnishing a bank guarantee to the tune of ₹5 lakhs.

Notice was issued.

Today, Mr. P.K. Bansal, Advocate, has put in appearance on behalf of the respondent.

I have heard learned counsel for the parties.

A perusal of Order XXXVII Rule 3(5) of Code of Civil Procedure reads as under:-

“(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him

unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.”

Though, the trial Court has exercised its discretion in granting the leave to defend subject to the furnishing of a bank guarantee to the tune of ₹5 lakhs, however, I find that the said condition is onerous. In view thereof, I feel that ends of justice would be served if the defendant is directed to furnish security to the tune of ₹5 lakhs to the satisfaction of the trial Court.

The present revision petition is disposed of in the said terms.

January 06, 2019
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(ALKA SARIN)
JUDGE

Whether speaking/reasoned
Whether Reportable

: Yes/No
: Yes/No