

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

CR-2546-2021

Date of Decision:01.11.2021

M/S GANGA JEWELLERS

...Petitioner

Versus

MAHAVIR

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Davinder Pal Singh Joura, Advocate
for the petitioner.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside the order dated 02.08.2021 (Annexure P-1) passed by learned Civil Judge (Junior Division), Dabwali, whereby, the application for leave to defend the suit filed by the respondent/defendant has been allowed.

2. Grievance of the petitioner, *herein*, is that having sold the gold ornaments worth Rs.6,94,475/-, the respondent-defendant issued a cheque for an equivalent amount and the same was dishonoured and therefore, being an admitted amount, he ought not to have been held entitled for leave to defend.

3. Having read the trial Court order, which is premised on the following reasoning, I find no grounds to interfere:

“6. After hearing learned counsel for the applicant and perusing the matter on record very carefully, it reveals that in the instant case, the applicant has pleaded that bill as well as cheque in question are false and fabricated documents as he neither executed the same in favour of the respondent nor he has purchased any gold ornaments from the plaintiff. The facts

*disclosed by the applicant supported by his affidavit can be deemed sufficient to entitle him to leave to defend, as during trial he may be able to establish a defence to respondent's claim. The facts disclosed entitles the applicant to interrogate the respondent and cross-examine the witnesses on the genuineness of the documents upon which the case of the respondent is based. The claim of the applicant may finally appear to be sham and illusory but prima-facie he has been able to raise a triable issue. In **State Bank of Hyderabad Vs. Rabo Bank 2015(4) CCC 696 (S.C.)** the Hon'ble Apex Court has held that when applicant raises a triable issue or a reasonable defence, applicant is entitled to unconditional leave to defend. Similar views have also been taken by the Hon'ble Apex Court in **Sunil Enterprises &Anr. Vs. SBI Commercial & International Bank Ltd., 1998(2) ACJ 01 (S.C.)***

7. *As a consequence of the above discussions, the application in hand is hereby allowed and applicant is permitted leave to defend without any condition as to furnishing surety/security. The application stands disposed of accordingly. However, nothing contained in the present order shall have any bearings on the final decision of the suit on merits."*

4. Reliance placed by the learned counsel for the petitioner on the provisions of Order 37 Rule 3(5) of the Civil Procedure Code, is thus misplaced. It is for the trial Court to exercise its discretion to ascertain as to whether or not, the evidence is required to be adduced qua the money claims to be adjudicated by way of trial. There is, thus, no irregularity either in facts or in law so as to exercise the extra-ordinary revisional jurisdiction of this Court.

5. No grounds to interfere are made out.

6. Dismissed.

November 01, 2021

gurpreet

(ARUN MONGA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No