

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-1465-2019 (O&M)

Date of Decision: 7.11.2023

Jaswinder Kaur

....Petitioner

VERSUS

Mahesh Inder Kumar and another

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Kewal Krishan, Advocate, for
Mr. Mukul Goyal, Advocate,
for the petitioner.

Mr. Chetan Bansal, Advocate,
for the respondent.

KARAMJIT SINGH, J.

Present civil revision petition has been filed by the petitioner/defendant against the order dated 15.1.2019 whereby the leave was granted to the petitioner to defend the suit subject to furnishing surety equal to the amount claimed in the suit i.e. surety bonds to the tune of ₹ 24 lakhs.

2. Brief facts of the case are that the respondent/plaintiffs filed suit for recovery of ₹ 24 lakh against the petitioner/defendant under Order 37 CPC on the basis of agreement to sell dated 11.9.2012 executed by the petitioner in favour of the respondents and at the time of execution of the said agreement, the petitioner received ₹ 10 lakh as earnest money from the respondents. On notice of the suit, the petitioner appeared and filed an application for leave to defend the suit before the learned trial Court. Said application was contested by the respondents and was allowed by the

learned trial Court vide impugned order whereby leave to defend has been granted to the petitioner subject to furnishing of surety bonds to the tune of ₹ 24 lakh. The petitioner being aggrieved by the aforesaid onerous condition being imposed by the learned trial Court has filed the present revision petition.

3. I have heard the counsel for the parties.

4. Counsel for the petitioner submits that the suit filed by the respondent is totally false and is based on forged and fabricated documents and as the petitioner raised plausible defence, the learned trial Court correctly granted permission to the petitioner to defend the suit as per provisions of Order 37 Rule 5 CPC but the condition imposed by the learned trial Court directing the petitioner to furnish surety bonds to the tune of ₹ 24 lakh, is not reasonable and deserves to be set aside.

5. Counsel for the respondent, while supporting the impugned order, *inter alia* submits that there is no illegality or infirmity in the impugned order whereby leave to defend has been granted to the petitioner subject to certain condition; that the condition imposed by the learned trial Court is reasonable and has been rightly imposed by the learned trial Court to safeguard the rights of the respondents.

6. I have considered the submissions made by the counsel for the parties.

7. Admittedly, the respondents have filed suit for recovery of ₹ 24 lakh under Order 37 CPC against the petitioner on the basis of one agreement to sell dated 11.9.2012. It is the case of the respondent that at the time of execution of the said agreement, amount of ₹ 10 lakh was paid to the petitioner as earnest money and later on, the petitioner failed to return the

said amount and thus, suit for recovery of ₹ 24 lakh has been filed which also includes interest and damages. The petitioner filed an application for leave to defend the said suit denying execution of the agreement to sell in question and further took plea that the same is forged and fabricated document. Learned trial Court, while observing that in case the defendant is not permitted to defend the suit, then grave miscarriage of justice could occur, gave permission to the petitioner to defend the suit but subject to certain condition which has been detailed above.

8. Taking into consideration the facts and circumstances of the case, this Court is of the view that the impugned order requires to be modified and the petitioner is not required to furnish surety bonds equivalent to the suit amount. In order to safeguard the interest of the respondents, it will be appropriate if the petitioner is granted leave to defend subject to furnishing of surety bonds to the tune of ₹ 12 lakh in place of ₹ 24 lakh as has been directed by the learned trial Court.

9. For the aforesaid reasons, the present revision petition is partly allowed. While maintaining order of the trial Court, vide which the leave to defend has been granted to the petitioner, the condition imposed by the learned trial Court is modified and the petitioner is directed to furnish surety bonds in the sum of ₹ 12 lakh to the satisfaction of the learned trial Court within next 30 days.

10. The revision petition stands disposed of in the aforesaid terms.

(KARAMJIT SINGH)
JUDGE

November 7, 2023
Paritosh Kumar