

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 2006 of 2023 (O&M)

Date of decision : 29.3.2023

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Ranjeet Singh

.....Petitioner

vs.

M/s Megh Raj Gupta and Sons, Sirsa

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. R.S. Sidhu, Advocate for the petitioner.

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H. S. Madaan, J.

Briefly stated, facts of the case are that, plaintiff M/s Megh Raj Gupta and Sons, New Grain Market, Mandi Dabwali, District Sirsa, through its proprietor Promila Gupta, had brought a suit for recovery of Rs.65,21,925/- under Order 37 CPC. On getting notice, the defendant had appeared and file an application seeking leave to defend. That application was accepted by the trial Court vide impugned order dated 9.3.2023. However, in terms of such order, the leave to defend was granted, subject to the condition that applicant-defendant shall furnish a surety or security in the sum of Rs.50 lacs on or before 31.3.2023. This order left the defendant aggrieved and

he has approached this Court by way of filing the present revision petition.

I have heard learned counsel for the revision petitioner – defendant, besides going through the record.

Learned counsel for the revision petitioner has submitted that the suit is not maintainable since it is not based upon dishonour of cheque, bills of exchange, promissory note or recovery of debt on the basis of written contract. Therefore, while granting leave to defend to the revision petitioner – defendant, he could be not asked to furnish any surety/security in the sum of Rs.50 lacs, which condition is very harsh and it has virtually made it impossible for the defendant to defend the suit.

I find that there is absolutely no merit in such submissions made by learned counsel for the revision petitioner -defendant. The fact cannot be lost sight of that suit filed is for recovery of Rs.65,21,925/- and the defendant has been asked to furnish surety/security in the sum of Rs.50 lacs only, which is less than the amount sought to be recovered by the plaintiff from the defendant. The suit was filed on 17.10.2017. The application for leave to defend was filed on 27.11.2017 i.e., about 5 years back and it has been disposed of after a period of more than 5 years.

As per claim of the plaintiff, an amount of Rs. 10 lacs had been advanced to the plaintiff way of cheque, which was got encashed by the defendant and an another amount of Rs. 3 lacs was

advanced to him by a separate cheque, which was also got encashed by the defendant and entries in that regard are stated to be there in the account books of the plaintiff. In that way, several transactions are there, vide which amounts were statedly advanced to the defendant through cheques. Therefore, argument by learned counsel for the revision petitioner that the suit does not fall within the purview of Section 34 CPC, is misconceived and without any force. In terms of Order 37 Rule 6 (b) CPC, a Court can direct the defendant to give such security as it thinks fit. Therefore, the trial Court has not done anything wrong in calling upon the defendant to furnish surety/security. It has to be taken into view that the Court has asked the defendant to furnish surety/security and not to deposit money in cash or furnish any bank guarantee etc.

The revision petitioner defendant is feeling aggrieved unnecessarily. There is no element of any harshness or arbitrariness in calling upon the revision petitioner – defendant to furnish the surety/security. The application for leave to defend is pending for 5 years. The Court is to strike balance between the interest of both the parties. While granting leave to contest to the defendant, the Court is to ensure that if the defendant fails, then the plaintiff does not face much difficulty in recovering the amount from him. Therefore, the impugned order passed is quite detailed, well reasoned and does not suffer from any illegality or infirmity. No interference by this Court, while exercising the revisional jurisdiction, is called for .

The revision petition is found to be without any merit and is dismissed accordingly.

29.3.2023
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No