

Sai Creations and others

....Petitioners

versus

Sika India Private Limited

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. R.K. Dogra, Advocate for petitioners.

Mr. Rakesh Sharma, Advocate for respondent.

ARUN MONGA, J. (ORAL)

Present revision petition is against order dated 10.01.2022 (Annexure P-5) whereby, petitioner-defendants were though granted leave to defend, but subject to furnishing bank security in the sum of Rs.21 lakh. Subsequently vide order dated 21.07.2022 (Annexure P-6), the rights of petitioners to furnish the same was extinguished by learned Civil Judge (Senior Division) Chandigarh in Civil Suit No.1531 of 2017 titled "Sika India Pvt. Ltd. vs. Sai Creations & others".

2. Learned counsel for the petitioner-defendants contends that respondent-plaintiff filed a Civil Suit for recovery of Rs.30,18,427/- (including principal and interest) as calculated upto 04.09.2017 @ 18% per annum along with future interest from the date of filing suit till actual realization. Petitioner-defendants moved an application dated 30.09.2019 (Annexure P-3) for grant of leave to defend as per provisions of Order XXXVII Rule 3(5) of Code of Civil Procedure, 1908 as the case

involves triable issues, since petitioners had never issued any cheques to respondent/ plaintiff-company. However, vide impugned order dated 10.01.2022 (Annexure P-5), while allowing application for leave to defend, a condition has been imposed that petitioner/defendants are required to furnish bank guarantee to the tune of Rs.21 lakh, which is contrary to settled position of law that when there are triable issues involved, then unconditional leave to defend is to be given.

3. I have heard learned counsel for the parties and gone through the record.

4. In the peculiar circumstances of the case since on one hand learned counsel for petitioners submits that matter has already been compromised in the proceedings filed under Section 138 of the Negotiable Instruments Act, 1881 and amount sought to be recovered has already been paid off, while on the other hand, learned counsel for respondent strenuously argues that suit in question arises out of outstanding amount by virtue of unpaid invoices raised on the petitioner-firm and there is nothing to do with cheque amount already paid in previous proceedings.

5. Be that as it may, without commenting on the merits of rival contentions, in order to balance the equities, impugned orders are modified to the extent that instead of furnishing bank guarantee of the entire amount sought to be recovered i.e., Rs.21 lakh, petitioners shall furnish a collateral security to the tune of Rs.10 lakh to the satisfaction of learned trial Court. Said collateral security can be either moveable or

immoveable property. Needful be done within a period of 6 weeks from today.

- 6. Disposed of, accordingly.
- 7. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 07, 2023
mahavir

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No