

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

CR No.5371 of 2022

Date of Decision: 06.02.2023

Gagandeep Traders Merchants & Commission Agents

.....Revisionist-petitioner

Versus

Himanshu Garg

.....Respondent

BEFORE: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by:- Mr. Saurabh Kaushik, Advocate
for the revisionist-petitioner.

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the order dated 08.08.2022 (Annexure P-3) passed by learned Additional Civil Judge (Senior Division), Nabha (for short 'the trial Court') in Civil Suit bearing No.37/04/2021, whereby the petitioner-defendant (here-in-after to be referred as 'the defendant') has been granted the leave to defend in the said Civil Suit subject to the condition of his filing the surety bonds to the tune of Rs.01 (one) lac, he (defendant) has preferred the instant revision petition with a prayer for the modification of the above-said order to the extent that he be allowed to defend in the Suit unconditionally, i.e without furnishing the surety bonds.

2. I have heard learned counsel for the petitioner-defendant in the present revision petition, at the preliminary stage and have also perused the file carefully.

3. Learned counsel for the petitioner-defendant contends that the defendant has put-forth a substantial defence against the claim raised by the

respondent-plaintiff (here-in-after to be referred as 'the plaintiff') in the said Suit and therefore, he should have been granted unconditional leave to defend therein and vide the impugned order, though the trial Court has granted the said leave to him but it has wrongly subjected the same to the afore-mentioned condition and hence, the said order is not legally sustainable and deserves to be modified as prayed for in this revision petition. To buttress his contentions, he has placed reliance upon the judgments rendered by Hon'ble Supreme Court in *M/s Uma Shankar Kamal Narain and another Vs. M/s M.D. Overseas Ltd. 2007(2) RCR (Civil) 585* and *IDBI Trusteeship Services Ltd Vs. Hubtown Ltd. 2017(1) SCC 568*.

4. However, the above-raised contention is devoid of any merit because the plaintiff has filed the said Civil Suit under Order XXXVII CPC for seeking the decree for recovery of Rs.2,86,000/- and the defendant moved application Annexure P-1 for seeking leave to defend in the Suit which has been allowed by the trial Court while directing him to file the surety bonds as discussed earlier. It is pertinent to mention here that in para No.3 in the said application, the defendant has asserted that he had not issued the cheque in question in favour of the plaintiff but in the very next line, he has pleaded that due to some business transactions between him and the plaintiff, he had issued the said cheque as security but the same has been misused by the plaintiff.

5. From the above-discussed contents of application Annexure P-1, it is explicit that though the defence, as canvassed by the defendant therein, raises the triable issue that may/can be adjudicated after affording him the opportunity to contest the claim set-forth by the plaintiff in the said Civil Suit but the fact remains that he has blown hot and cold in the same breath by

advancing two different versions qua the issuance of the said cheque and in such an eventuality, he does not deserve to be granted unconditional leave to defend. The observations as made in *M/s Uma Shankar (supra)* and *IDBI Trusteeship Services Ltd (supra)*, are of no avail to the defendant because in *M/s. Uma Shankar (supra)*, the Apex Court has re-iterated the guidelines, as laid down earlier, for the purpose of granting leave to defend and has, rather, directed the appellants to deposit the amount of Rs.20 lac in the Registry of the High Court. Similarly, in *IDBI Trusteeship Services Ltd (supra)* also, their Lordships have discussed the afore-said guidelines and have observed that the defendant would be granted leave to defend the Suit on deposit of the amount of Rs.418 crores in the High Court or to give security worth the said amount to the Prothonotary and Senior Master of the High Court.

6. In view of the fore-going discussion, this Court is of the considered opinion that the impugned order (Annexure P-3) does not suffer from any illegality, irregularity, infirmity or perversity so as to call for any interference by this Court. Resultantly, the revision petition in hand, being devoid of any merit, stands dismissed.

February 06, 2023

pooja

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

No