

281. 2024:PHHC:029491
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.4275 of 2023
Date of decision: 29.02.2024

Rajinder Kaur ... Petitioner

Versus

Joginder Kamboj and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Ramandeep, Advocate, for the petitioner.
Mr. Mandeep Singh Talwar, Advocate, for respondent No.1.

GURBIR SINGH, J.

As per office report, notice to respondents No.2 and 3 could not be issued as their correct address is incorrect.

Learned counsel for the petitioner submits that respondent No.1 is the contesting respondent and is being represented. Service upon respondents No.2 and 3 is not necessary being proforma respondents.

Accordingly, service upon respondents No.2 and 3 is hereby dispensed with.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 05.07.2023 (Annexure P-3) passed by learned Civil Judge (Junior Division), Patiala, whereby the application filed by the petitioner along with respondents No.2 and 3 (defendants in the suit) under Order 37 Rule 3(5) of CPC for leave to defend the suit, though has been allowed but subject to furnishing

liquidated security of Rs.6 lacs or one security on the basis of immovable property through a registered document or through bank guarantee.

2. Brief facts of the case are that respondent No.1-plaintiff-Joginder Kamboj filed a suit under Order 37 CPC for recovery of Rs.6 lacs from the defendants and also claimed the relief of permanent injunction, with the averments that he was a collecting agent of Shriram Finances, Patiala and since the defendants had also taken loan from said Shriram Finances, the plaintiff used to visit the house of defendants for collecting EMI and gradually, good relations developed amongst them. By misusing the trust of plaintiff, the defendants obtained a cash loan of Rs.6 lacs from the plaintiff, which he arranged from his sister Sarabjeet Kaur and as security, the defendants issued three cheques for the said amount in favour of Sarabjeet Kaur and also handed over their original registered sale deed of the house. The cheques so issued were not honoured on presentation because of “insufficient funds” and a legal notice was also issued, which was replied by them and perusal thereof would show that the defendants do not want to pay the said amount. Hence, the suit was filed.

2.1 On the other hand, the stand of the defendants is that defendant No.1 had obtained loan from Shriram Finance for the purchase of Acura. The plaintiff has played fraud with them and has wrongly obtained the cheques from them and had also taken away sale deed of the house. The plaintiff was collecting EMI of Shriram Finance from

defendant No.1 in good faith and they handed over three cheques to the plaintiff for repayment of EMI but the same were misused by him.

2.2 During pendency of suit, the defendants filed an application Order 37 Rule 3(5) of CPC for leave to defend the suit. Vide order 05.07.2023, though said application was allowed but subject to furnishing liquidated security of Rs.6 lacs, as stated above, by observing that the facts whether the cheques were obtained by the plaintiff under the garb of EMI of loan to be paid to Shriram Finance by the defendants and the fact that the plaintiff has obtained money from his sister Sarabjeet Kaur which was given to the defendants, are to be proved only after leading evidence by both the parties. It is the said order which has been challenged by way of present revision petition.

3. Learned counsel for respondent No.1/plaintiff at the first instance submits that the plaintiff has no objection if the condition for grant of leave to defend is waived off but keeping in view that the suit is summary in nature, the same be disposed of in a time bound manner.

4. Learned counsel for petitioner has admitted that she has no objection for the disposal of the suit in a time bound manner.

5. In view of above statements, the present revision petition stands disposed of and the order dated 05.07.2023 (Annexure P-3) granting leave to defend is hereby confirmed but without any condition and the same be considered as unconditional order of leave to defend, with a further direction to the learned trial Court to dispose of the suit

expeditiously preferably within a period of six months from the date of receipt of certified copy of this order.

(GURBIR SINGH)
JUDGE

February 29, 2024
sanjeev

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