



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

103

LPA-2586-2025

Date of Decision: 29.08.2025

Dharmender

...Appellant

Versus

M/s Haryana Steel Mongers (P) Ltd. and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI**

Present:- Mr.Puneet Jindal, Senior Advocate with
Mr. S.K. Yadav, Advocate, for the appellant.

HARSIMRAN SINGH SETHI, J. (ORAL)

1. In the present letters patent appeal, the challenge is to the order dated 16.07.2025 passed by the learned Sing Judge in CWP-8634-2019, by which, the prayer of the appellant raised against the order passed by the Commercial Court, dated 28.02.2017, that the security amount of Rs.1.25 crores with one surety in the like amount be furnished while granting leave to defend has been partly interfered with, on the ground that the same is perverse.

2. The learned Single Judge, after considering all the facts and the relevant provisions, came to the conclusion that the condition imposed of providing security and one surety to the principal amount of Rs.64,72,056/- while granting leave to defend does not suffer from any infirmity either on facts or on law, but reduced the amount of providing security from Rs.1.25 crores to the principal amount of Rs.64,72,056/-.

3. Learned senior counsel appearing on behalf of the appellant



argues that no condition could have been imposed while granting the leave to defend especially when no material evidence has come on record to show that the liability exists qua the appellant to pay the said amount as has been claimed by the respondent-plaintiff. Learned senior counsel submits that till the evidence is led and the allegations by the plaintiff are proved, putting the condition upon the appellant-defendant to give the guarantee is causing prejudice to him and the same is also contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in ***Neebha Kapoor vs. Jayantilal Khandwala and others***, (2008) 3 SCC 770 as well as to the settled principle of law settled in ***Sudin Dilip Talaulikar vs. Polycap Wires Private Limited and others***, (2019) 7 SCC 577.

4. We have heard the learned senior counsel appearing for the appellant and have gone through the record with his able assistance.

5. The argument has been raised by the learned senior counsel that the leave to defend should have been granted unconditionally in the facts and circumstances of the present case, especially when the Commercial Court, while passing the order dated 28.02.2017 did not record the fact that even *prima facie* liability exists of the appellant-defendant. Learned senior counsel further submit that once, the criteria has been fixed by the Hon'ble Supreme Court of India as to under what circumstances the conditions can be imposed while deciding ***Sudin Dilip Talaulikar's*** case (supra), the condition imposed upon the appellant of giving the security to the amount claimed by the respondent-plaintiff is incorrect.

6. The said argument needs to be looked into while keeping in view the order passed by the Commercial Court as well as the settled



principle of law which is being relied upon. In paragraph 10 of the order passed by the Commercial Court, dated 28.02.2017, the reason given to grant the leave to defend is that though the bills have been placed on record, but the bills do not bear the signatures and they are computer generated. The Commercial Court held that said bills are yet to be proved during the evidence and as the trivial issue exists between the party whether the goods were supplied or not, the leave to defend was granted but the same was with the condition that the appellant, who is the defendant before the Commercial Court, will furnish the security along with one surety for Rs.1.25 crores, which is being claimed by the respondent-plaintiff. The said condition is only to secure the interest of the plaintiff which cannot be treated as arbitrary or illegal.

7. It may be noticed that had the appellant been directed to deposit the claimed amount, the question could have been raised but giving a surety of the amount claimed along with surety cannot be treated as arbitrary or a condition which is not warranted in the facts and circumstances of the present case.

8. Learned senior counsel for the appellant submits that the firm is closed and therefore, giving the security with surety will not be in the interest of the appellant and is also beyond the means of the appellant. This argument clearly goes to show that the condition imposed upon the appellant is being challenged not because the same is not warranted but as per the claim of the appellant, said condition cannot be complied with. Securing the interest of the plaintiff becomes the duty of the Court especially when a claim has been raised against the defendant by giving due reasons.



9. With regard to the settled principle of law being relied upon by the appellant in *Neebha Kapoor's* case (supra), it may be noticed that the reliance is being placed upon paragraphs 11 and 12 of the said judgment.

The same are as under:-

“11. For the purpose of obtaining a summary judgment in terms of Order 37 of the Code, ordinarily the original documents must be produced. Original documents are not available. Appellant, therefore, is obligated to prove the loss of documents. Only because a suit has been entertained as a summary suit, the same by itself may not be a ground for passing of a judgment on mere asking. We have noticed the fact situation obtaining herein. The High Court was of the opinion that it is a case where unconditional leave should be granted. The question as to whether the defence of the respondents is moonshine or not was not a matter which required consideration of the High Court at that stage. A decree could not have been granted on the basis of even photostat copies of the documents. [See Food Corporation of India v. Dena Bank, Indore and another AIR 2004 MP 158] Presumption in regard to a negotiable instrument or a bill of exchange in terms of Section 118 of the Act is also an evidence. It is true that a presumption can be raised that a bill of exchange was correctly stamped as provided for under Clause (f) of Sub-section (2) of Section 128 of the Code but a decree is to be passed by a court of law upon application of mind.

12. Order 37 of the Code has been prescribed in terms of the provisions contained in Clause (f) of Sub-section (2) of Section 128 of the Code so as to expedite trial of suits specified therein. We have no



doubt in our mind that the underlying public policy behind Order 37 is expeditious disposal of suits of commercial nature. It provides for such disposal as expeditiously as possible by prescribing time frame therefor. Where, however, applicability of Order 37 of the Code itself is in question which appears to be the principal reason behind the impugned judgment, in our opinion, grant of leave may be permissible. The court before passing a decree was entitled to take into consideration the consequences therefor.”

10. A bare perusal of the above reproduction would show that the observation of Hon’ble Supreme is while dealing the facts where the decree was passed and not with regard to the interim order for the grant of security as well as surety of the amount claimed. Hence, placing reliance upon the said judgment, in the facts and circumstances of the present case, is not correct.

11. With regard to the judgment of the Hon’ble Supreme Court of India, in *Sudin Dilip Talaulikar’s* case (supra), paragraphs 12 and 15 are being relied upon which are as under:-

“12. In *Hubtown Limited* (supra), this court has laid down the principles which should guide exercise of such discretion as follows:

“17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.

17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good



defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.

17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.

17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised),



shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.”

XXXX XXXX

15. But the defence raised by the appellant in the aforesaid background was certainly not a sham or a moonshine much less frivolous or vexatious and neither can it be called improbable. The appellant had raised a substantial defence and genuine triable issues. The failure both by the Trial Judge and the High Court to notice and consider the aforesaid issues as discussed by us hereinbefore leaves us satisfied that there was no justification to grant conditional leave to defend. The fact that there may have been commercial relations between the parties was the ground for the institution of the summary suit but could not per se be the justification for grant of conditional leave sans proper consideration of the defence from the materials on record.”

12. A bare perusal of the above reproduction would show that the Hon’ble Supreme Court of India has laid down certain guiding principles as to where, the conditions can be imposed and where the leave to defend is to be granted unconditionally. The reliance being placed by the learned senior counsel in the present case is upon reproduction of 17.1 and 17.2 of paragraph 12. As far as reliance on paragraph 17.1, as reproduced in paragraph 12 of the judgment, the same will not come to the rescue as no finding has been recorded by the Commercial Court that the benefit of leave to defend is being granted as the defence is likely to succeed but the same has only been granted on the ground that the bills, which have been produced to claim the amount, are yet to be proved in the evidence.



13. With regard to the reliance on reproduction of 17.2 of paragraph 12, reproduced hereinbefore, it may be noticed that the word used by the Hon'ble Supreme Court of India is 'ordinarily'. Meaning thereby that the facts and circumstances are to be seen while dealing the issue of imposing condition while extending benefit of leave to defend and what conditions are required to be imposed, is to be looked into by the competent Court of law in case challenged. In the present case, the appellant has not been directed to deposit the amount but has only been asked to give security as well as surety of the amount so as to secure the interest of the plaintiff. That being so, the order passed by the Commercial Court, dated 28.02.2017, as well as the order passed by the learned Single Judge, dated 16.07.2025, cannot be treated as contrary to the guidelines given in ***Sudin Dilip Talaulikar's*** case (supra).

14. At this stage, learned senior counsel for the appellant submits that even in the suit, the total amount asked was Rs.1,00,96,407/-. It may be noticed that the said amount was calculated as on 01.01.2011. Be that as it may, the learned Single Judge has already reduced the amount for payment for grant of security and surety to Rs.64,72,056/- which is much less than the amount which has been assessed by the plaintiff but still, the appellant is aggrieved.

15. No other argument has been raised.

16. Keeping in the totality of the circumstances and the facts mentioned hereinbefore that only the security along with surety has been asked from the appellant qua the amount being claimed, no ground is made out to interfere in the order passed by the learned Single Judge, dated



16.07.2025. as the same has not been found to be perverse either on facts or law.

17. The present appeal is dismissed.

18. Pending applications, if any, also stand disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

(VIKAS SURI)
JUDGE

August 29, 2025
harish

Whether speaking/reasoned	Yes
Whether reportable	No