



138 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-2721-2024 (O&M)

Date of decision : 02.05.2025

Wontel

...Petitioner

Vs.

Rajat Enterprises and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Kumar Goyat, Advocate  
for the petitioner.

Mr. Aditya Singh, Advocate for  
Mr. Ravinder Malik, Advocate  
for the respondents.

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ANIL KSHETARPAL, J. (Oral)

1. The petitioner herein filed a summary suit under Order XXXVII of the Code of Civil Procedure, 1908 for recovery of Rs.14,64,226/- alongwith interest @ 24% per annum.

2. It is the case of the plaintiff that it sold fire alarm system to the defendant on 29.11.2021, on the basis of agreement dated 30.09.2021. The total value of the fire alarm system supplied to the defendant was Rs. 45,14,226/-, out of which, the defendants paid Rs.30,50,000/-. Hence, the suit for recovery of remaining amount was filed. The Court sent the notice in the incorrect form i.e ordinary recovery suit. The defendant appeared in the Court on 21.07.2023 and sought time to file application for leave to defend. The Court passed the following order on 21.07.2023:-

*"Ch. Manmohan Singh Advocate has filed memo of*



*appearance on behalf of defendant. On request of defendant adjourned to 27.07.2023 for filing an application for leave to defend on behalf of defendant."*

3. The matter was adjourned to 27.07.2023. When the matter was taken up on 27.07.2023, the following order was passed:-

*"An application for leave to defend on behalf of defendant has not been filed. Same be filed on 31.07.2023."*

4. Thereafter, the defendant filed two applications, one under Section 8 of the Arbitration & Conciliation Act, 1996, whereas, the second under Order 7 Rule 11 (d) of the Code of Civil Procedure, 1908, for rejection of the plaint. The Court adjourned the case for filing reply to the applications. Subsequently, vide order dated 08.12.2023, both the applications were dismissed. The defendant filed an application for leave to defend on 18.12.2023. The trial Court allowed the application on the following two grounds:-

- I. The summons sent to the defendants were in the incorrect form like a normal recovery suit.
- II. The summary suit has been filed on the basis of the agreement, which does not bear the signatures of the defendants.

5. Learned counsel representing the petitioner submits that on 21.07.2023, the defendant appeared through counsel and sought time to file application for leave to defend. Hence, the period of limitation for filing the application would begin to run from 21.07.2023. He further submits that apart from the agreement, the plaintiff also produced invoices to show supply of fire



alarm system. He submits that the defendant paid Rs.30,50,000/- out of Rs.45,14,226/-, however, the trial Court overlooked these facts.

6. *Per contra*, learned counsel representing the respondents submits that ordinary summons were received, hence, the leave to defend has been correctly granted.

7. Order 47 of the Code of the Civil Procedure, 1908, provides that the application for leave to defend is required to be filed within a period of 10 days on receipt of the summons. It is pertinent to note that the defendant through his counsel appeared in the Court on 21.07.2023 and sought time to file the application for leave to defend. The defendant filed the application only on 18.12.2023, which was beyond the period prescribed in the Code of Civil Procedure. As a result, the question of incorrect form of summons does not arise. Hence, the application of the defendant for leave to defend was not maintainable as it was filed beyond the prescribed period of limitation.

8. Keeping in view the aforesaid facts, the impugned order passed by the trial Court is set aside while directing to pass a fresh order in accordance with law within a period of one month from the date of receipt of certified copy of the order.

9. The revision petition is disposed of.

10. All the pending miscellaneous applications, if any, are also disposed of.

02.05.2025

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(ANIL KSHETARPAL)  
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No