



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

(i) CR-1981-2019 (O&M)

Devender Singh

...Petitioner

VERSUS

Surender @ Maani

...Respondent

(ii) CR-1988-2019 (O&M)

Devender Singh

...Petitioner

VERSUS

Krishan

...Respondent

Date of Decision: August 05, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Manoj Pundir and Mr.Puneet Munjal, Advocates
for the petitioner.

Mr.Rajesh Duhan, Advocate
for the respondents.

ARCHANA PURI, J.

These are two revision petitions filed by the petitioner to assail two separate orders dated 25.02.2019 passed by learned trial Court, in Civil Suit No.139-2018, titled 'Devender Singh vs. Surender @ Maani' and Civil Suit No.138-2018, titled 'Devender Singh vs. Krishan', whereby, applications under Order 37 Rule 3 Sub-rule 4 CPC, filed in both the suits,

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were dismissed.

The essential facts, as culled out, are as follows:-

That, the petitioner-plaintiff had filed two suits for recovery of Rs.2,25,500/- each from respondents-defendants-Surender @ Maani and Krishan, on the assertions (in both the suits) about respondents-defendants having borrowed an amount of Rs.2,25,500/-, on 03.11.2017, from the petitioner-plaintiff and had executed respective pronote and receipts, in view of the said borrowed amount. The pronote and receipts were executed on 03.11.2017. Since, the suit was under Order 37 CPC, the summons under Order 37 Rule 3 CPC, in form No.4-A, were sent to the respondents-defendants and the same were received by them on 28.08.2018. Thereupon, on 11.10.2018, the respondents had put in appearance and the cases were adjourned further for filing of written statements.

However, the respondents had not filed any applications for seeking leave to defend. Even, written statements were not filed. It was on 16.10.2018, the applications were filed by the petitioner under Order 37 Rule 3 Sub-rule 4 CPC, for issuing summons for judgment to the respondents-defendants, as they have entered appearance before the Court. The copy of the applications is Annexure P-3 (in both the cases). Therein, it was asserted that the respondents-defendants had entered their appearance before the Court through Advocate. They have no defence in the suits, as the amount claimed, has not been paid by the respondents-defendants to the petitioner-plaintiff. In the given circumstances, the petitioner-plaintiff had sought issuance of summons for judgment to the respondents-defendants, in terms of Order 37 Rule 3 Sub-rule 4 CPC.



However, the respondents-defendants had appeared but did not file reply. Rather, it was pleaded on their behalf that no money was borrowed from the petitioner-plaintiff and they have been implicated in the suits falsely.

After hearing counsel for the parties, learned trial Court has passed the impugned orders and paragraph No.5 and 6 of the impugned orders, is reproduced, as herein given:-

“5. Perusal of the suit shows that there is no evidence except the pronote which established the facts given in the plaint. No prima-facie relation is mentioned in the plaint to prove the facts of giving money to the respondent-defendant. In the present scenario, the money given to any person in a business transaction or loan is given through cheque or by way of banking transaction as in the present lis, the amount involved is more than two lacs rupees and is to be given to the defendant through banking transaction such as RTGS or by way of cheque. No such evidence is placed on file to prove any type of these banking transactions.

6. Keeping in view of the facts discussed above, the application under Order XXXVII Rule 3 Sub Rule 4 of CPC is declined and the defendant is permitted to file written statement on the date fixed.”

Being aggrieved, the petitioner-plaintiff has filed the revision petitions in hand.

Upon notice, respondents made appearance through counsel.

Learned counsel for the parties heard.

From the copies of the plaints, brought on record, it is evident that suits have been filed under Order 37 CPC, which provides for a



summary procedure, in respect of certain suits. The essence of the summary suit is that the defendant is not, as in an ordinary suit, entitled as of right to defend the suit. He must apply for leave to defend within 10 days, from the date of the service of the summons upon him and such leave will be granted, only if the affidavit filed by the defendant discloses such facts, as the Court may deem sufficient for granting leave to the defendant to appear and defend the suit. If no leave to defend is granted, the plaintiff is entitled to a decree. The object underlying the summary procedure is to prevent unreasonable obstruction by a defendant who has no defence.

Rule 3 of Order 37 CPC provides the procedure for the appearance of the defendant, which is reproduced, as herein given:-

“3. Procedure for the appearance of defendant—(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.



(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6) At the hearing of such summons for judgment,—

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be



fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.”

Thus, it is evident that the defendants had to file an appearance within 10 days of the service of the summons in the summary suit and if the defendant does not enter such appearance, he is not entitled to defend the suit. If the defendant enters the appearance, the plaintiff has to serve on the defendant, the summons for judgment under sub-rule (3) of Rule 3 and thereafter, under sub-rule (5) of Rule 3 and on such summons for judgment, the defendant can apply for leave to defend the suit.

However, in the cases in hand, even though, the respondents-defendants had entered into appearance, but no application, as such was filed to seek leave to defend, within the requisite period. Thereupon, applications under Order 37 Rule 3 Sub-Rule 4 CPC was filed and the same were dismissed. However, the respondents-defendants, had entered into appearance, in the cases in hand, and only thereupon, the petitioner-plaintiff had filed the applications for service of summons for judgment. The applications for the needful were filed under Order 37 Rule 3 Sub Rule 4 CPC, wherein, it was also categorically stated that there is no defence available to the defendants.

These applications were dismissed, as observed aforesaid. The

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reasoning given by the trial Court, while dismissing the applications, is not satisfactory. At this stage, the Court had taken into consideration the fact that there is no evidence, except pronote, which establish the facts, given in the plaints and there is no prima facie relation, mentioned in the plaints, to prove fact of giving money to the respondents-defendants. Furthermore, it also considered the fact of the amount involved to be more than Rs.2 lakh, as a result whereof, it was required to be given through banking transaction, such as RTGS or by way of cheque.

However, these are not the aspects, which are required to be taken into consideration, while adjudicating on the applications under Order 37 Rule 3 Sub Rule 4 CPC. The summons for judgment had to be issued, in view of the categorical claim of the petitioner-plaintiff about the pronote and receipts having executed by the respondents-defendants, in his favour, after borrowing of the amount in question from him and also, when they had specifically made appearance but did not apply for seeking leave to defend. It is further stated in paragraph No.5 of the applications that the defendants have no defence, as the amount claimed has not been paid.

These pleas ought to be considered by the Court, after service of the summons for judgment, as per Order 37 Rule 3 Sub Rule 4 CPC and when the respondents makes appearance and apply to the Court to seek leave to defend, as provided under Order 37 Rule 3 Sub Rule 5 CPC. The trial Court is going one step ahead of the process, as laid down by the legislation in Order 37 Rule 3 CPC, as reproduced in the earlier portion of the judgment.

In the given circumstances, the impugned orders warrant



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interference. As such, both the revision petitions are hereby allowed and the impugned orders are set aside. The applications under Order 37 Rule 3 Sub-Rule 4 CPC are allowed. Learned trial Court shall proceed further in accordance with summary procedure, as laid down under Order 37 CPC.

August 05, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No