

**CWP-8634-2019**

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****101****CWP-8634-2019****Date of Decision: 16.07.2025****DHARMENDER****-PETITIONER****V/S****M/S. HARYANA STEEL MONGERS (P) LTD. AND ORS.****-RESPONDENTS****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Shashi Kumar Yadav, Advocate,
for the petitioner.

Mr. Mukul Singla, Advocate,
for the respondent no.1.

KULDEEP TIWARI, J.

1. The petitioner's application filed to leave to defend under XXXVII, Rule 5, was partly allow by the Commercial Court concerned (Addl.District Judge, Faridabad), vide order dated 28.02.2017 (Annexure P-1), however, subject to furnishing a security in the sum of Rs.1.25 crores, with one surety in the like amount, and imposition of such condition propelled him to file the instant writ petition under Article 226/227 of the Constitution of India, before this Court.

2. Through the instant petition, the petitioner is challenging the impugned order in the capacity of legal heir, as he has already resigned from partnership firm on dated 19.11.2009.

3. Learned counsel for the petitioner while advancing his arguments submits that once the Commercial Court, itself comes to a



CWP-8634-2019

-2-

conclusion that the respondents/ plaintiffs have not placed on record the original bills, rather true copies thereof, have been placed, which do not bear signatures of petitioner/defendant, or their representatives in token of their goods. Further, the Commercial Court has also concluded that the issue therein, is triable between the parties, regarding supply or non-supply of goods, which can be decided only after the parties involved are given opportunity to lead their defence, therefore, the leave to defend must have been granted, unconditionally, instead of imposing condition of furnishing security.

4. He further submits that even the quantum of security is not justifiable, as the total claim raised in the plaint is about Rs.1,00,96,407/-.

5. No other argument was raised, on behalf of the petitioner.

6. Before this Court embark upon the arguments raised by learned for the petitioner, and to evaluate the legality of the impugned order, the relevant facts *qua* which there is a wrangle amongst the parties are as under:-

i. The respondent no.1/plaintiff filed a summary suit for recovery of Rs.1,00,96,407/-, under Order XXXVI of CPC against the petitioner/defendant, out of which Rs.64,72,056/-, is the principal amount, whereas Rs.36,24,351/-, is claimed in the form of interest @ 24% p.a. against M/s Globe Engineering Co.

ii. It is pleaded in the plaint that the petitioner/defendant has been receiving the goods from the



respondent no.1/plaintiff on the trust, and the petitioner used to pay the price, and further the amount paid by the petitioner/defendant is duly reflected in the statement of accounts. However, subsequently, the petitioner/defendant delayed the payment, and the last payment was made by him on 06.08.2008, and thereafter, no payment was made by respondent no.1, against the supply of goods. It was pleaded in the plaint that upto dated 01.10.2008, a total sum of Rs.64,72,056/- was outstanding against the petitioner/defendant, which is reflected in the statement of accounts.

iii. A legal notice was served by the respondent no.1/plaintiff, and the same was duly served upon the petitioner/defendant, which was duly replied by the petitioner/defendant, vide reply dated 22.09.2010, wherein, it was specifically, pleaded that M/s Globe Engineering Company is a proprietorship/partnership firm, owned by Sh. Brij Lal Seth or by Sh. Dharmender.

iv. Thereafter, the petitioner/defendant caused appearance upon service of summons of judgment, and subsequently, he filed an application under Order XXXVII Rule 3(5) of the CPC, for leave to defend. It was alleged in the application the suit filed by the respondent/plaintiff is not maintainable, under the provisions of Order XXXVII of the CPC, and further it is bad for mis-joinder of parties. The



petitioner/defendants has pleaded that the present suit has been filed, just to harass and to extort money from him.

v. The territorial jurisdiction of the Commercial Court was also challenged in the application. It was alleged that the bills upon which the respondent no.1/plaintiff, is relying, are forged and fabricated, and no amount is due and payable towards the plaintiff/defendant. Further, there is no bilateral contract between the parties, and in the absence of which, the present suit for recovery under Order XXXVII of the CPC, is not maintainable. The application for leave to defend, as preferred by the petitioner/defendant was duly replied, wherein, it was submitted by the respondent no.1/plaintiff, that there is a delay in filing the said application, as petitioner/defendant has not caused appearance within 10 day of the summons for judgment, and moreso, the same is not accompanied by any application seeking condonation of delay, therefore, the said application is liable to be dismissed solely on the ground of delay.

vi. Further, the respondent no.1/plaintiff joined the issue on merits as per the pleadings, however, the such details of pleadings, are not required to be discussed herein, as the same is not required for adjudication of the instant issue, by this Court.

vii. The Commercial Court concerned, considering



that no original bills were placed on record, and these were only computer generated bills, and no certificate, or affidavit under Section 63B of the Indian Evidence Act, too has been furnished, therefore, same cannot be accepted, at this stage, and triable issue exists between the parties concerned, and finally, leave to defend was granted, however, subject to furnishing security in the sum of Rs.1.25 crores, with one surety in the like amount.

7. This Court has examined the submissions, as made by learned counsel for the parties concerned, as well as the impugned order.

i. In the instant case, the suit was filed under the provisions of Order XXXVII of the CPC, by the respondent no.1/plaintiff, as the issue involved was commercial in nature, therefore, as per Order XXXVII, Rule 3(5) CPC, the defendant was required to take leave to defend.

ii. The basic purpose of filing suit under Order XXXVII, is to prevent delay and frivolous defence, in commercial/debt recovery matters. In the summary suit, the defendant, has no right to defend the suit straightway, as in an ordinary suit. Therefore, he must have to apply for leave to defend within 10 days from the date of service of summons of judgement upon him, and upon filing such application for leave to defend, the Court may grant such leave to the defendant, if he satisfies this Court that he has substantial



defence in his favour.

iii. The only issue, as raised before this Court by the petitioner/defendant by filing instant petition is regarding imposition of condition (*supra*) while rule 3 of Order XXXVII CPC, lays down that the petitioner/defendant must follow steps once a summary suit is filed, and to take permission to defend the suit.

iv. Rule 3(1) of the CPC, prescribes notice of summons to the defendant, which is to be issued in Form No.4, or prescribed format, and further directs the defendant to enter an appearance within 10 days of service of such summons.

v. Rule 3(2) and (3) prescribes the mode of appearance for the defendant, and once the defendant enters appearance in writing, the application for leave to defend is required to be filed within 10 days from the service of summons for judgment, supported by an affidavit, disclosing therein, such fact, as may deem sufficient to entitle him to defend.

vi. Under sub rule 3 the Court may grant leave to defend either unconditionally, or upon such terms as may appear to Court to be just.

vii. Further, rule 3(6)(b) prescribes that the defendant is permitted to defend as to whole, or any part of the claim, the Court, or Judge may direct defendant to furnish such security



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

8. For ready reference rule 3 of Order XXXVII of CPC, is extracted hereinafter:-

“3. Procedure for the appearance or 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 A 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. 4-A 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.]”

9. A perusal of the above clearly reflects that the underlining object of filing suit under Order XXXVII CPC, is to prevent delay and frivolous defence in commercial matters, and to ensure that defendant shall not adopt dilatory tactics.

10. Further, on the touchstone of the above legal prepositions, this Court finds that there is no illegality or error committed by the Commercial Court concerned, while granting leave to defend to the present petitioner, however, subject to furnishing security amount. It is not under dispute that as claimed in the plaint, the amount is due since the year 2009, and the suit was filed in the year 2010, therefore, the basic object of filing summary suit has already defeated in the instant matter.

11. In view of the above, this Court is of the considered view



CWP-8634-2019

-9-

that the condition, as imposed by the Commercial Court concerned, while granting leave to defend vide impugned order, is absolutely legal, and does not require any interference.

12. However, since the principal amount for which the suit has been filed is of Rs.64,72,056/-, therefore, this Court deems it apt to reduce the security amount of Rs.1.25 crores, as imposed vide impugned order, to the extent of principal amount only i.e. Rs.64,72,056/-, coupled with one surety in the like amount.

13. Consequently, the instant petition is, **dismissed**, with the aforesaid modification.

July 16, 2025
dharamvir

(KULDEEP TIWARI)
JUDGE

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