

(1989) 01 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2742 of 1988

M/s. Guru Nanak Paper Mills Private Limited and others	APPELLANT
Vs	
M/s. Ravi Sons Partnership Concern Industrial Area, Chandigarh	RESPONDENT

Date of Decision : 31-01-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5

Citation : (1989) 01 P&H CK 0008

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : M.L. Sarin, with Miss Jaishree Thakur and Mr. Ashish Handa, for the Appellant; H.S. Awasthy, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—This revision petition is directed against the order of the trial Court dated October 10, 1988, whereby the Defendants have been given the permission to contest the suit, filed, under Order XXXVII, Code of Civil Procedure; provided the Defendants furnish security in the sum of Rs. 4 1/2 lacs to the satisfaction of the Court.

2. The learned Counsel for the Defendants-Petitioners submitted that once the leave was granted to contest the suit, no such condition could be imposed. In support of the contention, the learned Counsel relied upon Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation, and Manjit Singh v. Manohar Lal Peshawaria (1977) P.L.R. 10 (S.N.) : 1977 Rev. L.R. 28. On the other hand, the learned Counsel for the Plaintiff Respondent submitted that in view of the admission made by the Defendants in the letter dated November 16, 1987, a copy whereof filed in this Court, the Defendants have been rightly directed to furnish security before they could be allowed to contest the suit.

3. It is not disputed that the Plaintiff himself also moved the application under

Order XXXVIII Rule 5 of the said code for attachment before judgment. According to the learned Counsel for the Plaintiff-Respondent, the application was not pursued in view of the impugned order.

4. After hearing the learned Counsel for the parties, I find that in view of the Supreme Court decision in Mechalec Engineers and Manufacturers" case (supra), no such condition could be imposed upon the Defendants. It was held therein:

If the Defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet shows such a state of facts lead to the inference that as the trial of the action he may be able to establish a defence to the Plaintiff's claim the Plaintiff is not entitled to judgment and the Defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security.

5. Consequently, this revision petition succeeds and is allowed. The impugned order is set aside to the extent the condition has been imposed upon the Defendants to furnish security. However, the application moved by the Plaintiff under Order XXXVIII Rule 5 of the above-said code will now be revived and appropriate orders will be passed thereon in accordance with law.