

**Ajit Singh Vs. Gurcharan Singh**

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**Court :** Delhi

**Decided On :** Nov-08-1966

**Reported in :** AIR1967Delhi35

**Judge :** I.D. Dua, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 37, Rule 3

**Appeal No. :** Civil Revn No. 415-D of 1966, against order of Sub J. 1st Class, Delhi D/- 7-9-1966

**Appellant :** Ajit Singh

**Respondent :** Gurcharan Singh

**Advocate for Def. :** Gurcharan Singh Bakshi and ; G.S. Duggal, Advs.

**Advocate for Pet/Ap. :** M.L. Sharma, Adv

**Judgement :**

ORDER

(1). This is a defendant's revision directed against the order of a learned Subordinate Judge 1st Class, Delhi, dated 7-9-1966 granting him relief to appear and defend the suit in question subject to the condition that he deposits in each by way of security the suit amount of Rs. 21,800/- together with the sum of Rs.2,000/- on account of estimated costs on or before 24-9-1966. It may be stated that the

suit had been instituted under order. 37 of the Code of Civil Procedure.

(2). On revision, the learned counsel for the defendant has submitted that the condition imposed by the Court below is very onerous because the entire amount along with the estimated costs have been directed to be deposited in cash. This according to him, is arbitrary and unjust.

(3). The Court below has dealt with the defense and holding it to raise a triable issue granted leave, but not being impressed by the defense, It is ordered the amount to be deposited in cash. This order is obviously passed in the exercise of the discretion of the Court below and this Court on revision normally does not interfere with such discretion. It is quite correct that ordinarily the defendant is not entitled to appear and defend a suit instituted under Order 37 of the code of Civil Procedure without obtaining leave of the Court which may be granted upon an application by the defendant disclosing facts making it incumbent on the holder of the negotiable instrument in question to prove consideration or such other facts which the Court considers sufficient to support the defendant's claims. Leave may be granted unconditionally or on terms as illustrated in order 37, Rule 3(2) of the Code.

The policy of the law, however is not to unduly obstruct the defendant in his defense by imposing too harsh conditions. The basis object of enacting order 37 in the Code is to see that suits on negotiable instruments instituted within the shorter period of limitation prescribed for the purpose are not unduly delayed by untenable pleas in defense because of the obvious legal presumption arising from such documents. But at the same time when the defense does raise a triable issue, the trial must not be rendered prejudicial to the defendant by imposing unduly harsh conditions. A triable issue being raised, the court must lean in favor of proper trial without placing unreasonable hurdles in the defendant's way but of course duly safeguarding the plaintiff's right to successfully execute the decree he may obtain and reap its fruit without much delay. Difficulty or observation. Beyond this, it would appear to be unfair and unjust to be the defendant if more onerous terms are imposed as a condition precedent to his appearance in Court for defending the suit.

(4). In the present case, in my opinion, the interests of justice would be best served if the defendant is required to furnish bank guarantee for the amount of the suit along with the estimated costs. The Court below, was, in opinion not quite fair and judicious in insisting on cash deposits in Court. The learned counsel for the defendant initially agreed to this condition but later reconsidering his position submitted that the security already furnished by him in pursuance of the order of the admitting Judge in this Court should be held sufficient. I do not agree that security furnished in the present proceedings can justifiably be considered sufficient. Bank guarantee would seem to me to be the only adequate security which, on the facts of this case, would satisfy the ends of justice and I order accordingly in modification of the order of the court below. The security would of course, be of a scheduled bank. The petitioner's learned counsel wants time to make arrangements for the security. I grant him one month from today for furnishing the requisite security. In the peculiar circumstances of the case, there would be no order as to costs.

(5). Before concluding, I must advert to one other aspect, In this case the revision was presented in this Court on 20-9-1966 and it was represented that certified copy of impugned order was not available and that the same would be filed as soon as it is obtained. Today, the learned counsel for the petitioner has produced before me the certified copy of the impugned order, which was ready on 22-9-1966. It is not understood why the learned counsel did not produce this copy. In this court immediately after its receipt as was represented by him in his application was represented by him in his application (C..M.3453-D). In future in all cases where an order is obtained from this Court exempting production of the certified copy on the ground that the same has not been made available to the applicant, the said copy should be produced within a reasonable time after it is received from the copying agency.

(6). Petition allowed.