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

**CR No.5516 of 2015
Date of decision: 23.09.2015**

M/s Aggarwal Petro, Old Grain Market ... Petitioner

Vs.

M/s Sunil & Company through Sh. Mini Jain, Proprietor

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Ashish Gupta, Advocate
for the petitioner.

Mr. Suresh Kumar Arya, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

Challenge in the present petition is to the impugned order dated 13.07.2015, Annexure P-4, whereby, the application filed by the petitioner-defendant under Order 7 Rule 11 read with Section 151 CPC, has been dismissed.

Mr. Ashish Gupta, learned counsel appearing on behalf of the petitioner-defendant submits, that the respondent-plaintiff had earlier, filed a suit for declaration but did not incorporate the para, vis-a-vis cause of action and amendment sought in this regard was declined. The application under Order 7 Rule 11 CPC, in the previously instituted suit was filed and the same vide order dated 24.08.2012, Annexure P-8, was allowed. After passing of the aforesaid order, the respondent-plaintiff has filed the present suit in 2014.

On going through the contents of the suit, in fact, it is a suit for recovery, whereas, it is purported to have been filed for grant of declaration and mandatory injunction, for the reasons, that admittedly claim of recovery of alleged money due, towards respondent-plaintiff has become time barred as period of limitation of three years for recovering the alleged money has expired. In essence, as per the averments, amount due was w.e.f. 30.09.2008. He further submits that the trial Court has committed illegality and perversity in declining the application.

Mr. Suresh Kumar Arya, leaned counsel appearing on behalf of the respondent-plaintiff submits, that earlier suit was instituted within a period of limitation, though it was also for declaration and the present suit is also for declaration. It is too premature for the trial Court to determine the fact, whether the suit is barred by any law, as per Order 7 Rule 11 CPC. Even otherwise, it is a mixed question of law and facts which can only be determined on the basis of the evidence to be led by the parties.

I have heard learned counsel for the parties and appraised the paper book.

The language enshrined under Order 7 Rule 11 CPC, leaves no manner of doubt that the trial Court is enjoined upon an obligation to reject the plaint, if it is, *ex facie,* found to be barred by law. It would be apt to reproduce the relevant paragraphs of the order, which read thus:-

> *"2. That from the period 1.4.2008 to 30.9.2008 the defendant firm were supplied different kind of mobile oils and auto parts by the plaintiff firm worth ₹ 46, 20,251/- and defendant paid the value for the aforesaid goods amounting to ₹ 42,99,506/- which includes the transfer of the payment of ₹14,19,169/- from the firm Raja Ram Paras Prabhu to the plaintiff firm Sunil & Company and after deducting the paid amount of ₹42,99,506/- from the total value of good supplied to the defendant the total due amount against the defendant in favour of plaintiff comes at ₹3,20,745/- for which the defendant is liable.*
>
> *3. That many times the plaintiff had requested the defendant to match and compare the accounts regarding the supply of the goods but every time the defendant used to put of the matter on one pretext or the other. The defendant has never done any effort to show his account regarding the value of the goods received by the defendant and according to the accounts of the plaintiff,*

the defendant is liable either to return the goods upto the value of ₹3,20,745/- or to pay this amount but the defendant is not returning the goods nor pay the value of the goods hence the present suit. All details/record in the shape of bills regarding the supply of total goods to the defendant by the plaintiff is attached for the kind perusal of this learned Court."

From the perusal, it is irresistibly concluded that the suit, in essence, is for recovery and cannot be said to be for declaration and mandatory injunction. As per the averments made in the suit, petitioner owed a sum of ₹3,20,745/- allegedly due since 07.09.2008, whereas, the suit has been filed in 2014, in my view, is apparently barred by limitation. Rejection of the previous suit and filing of subsequent suit, would not be enlarge period of limitation. In my view, the order impugned lacks reasons in not noticing the aforementioned contentions. Whenever an application under Order 7 Rule 11 CPC is filed, the Court is enjoined upon an obligation not to see the defence, but to see the pleadings in the plaint and thereafter, form an opinion whether the ingredients of Order 7 Rule 11 CPC are made out. It is a fit case where ingredients of Order 7 Rule 11 CPC are attracted. Therefore, suit, *ex facie,* was barred by limitation, much less, not maintainable as instead of resorting to the recovery, relief for declaration has been sought to recover money for which the period of limitation has expired in the year 2011 and suit filed in 2014, is barred by limitation.

In view of what has been observed above, the impugned order dated 13.07.2015 is set aside and the revision petition is allowed. Proposed amended plaint, Annexure P-5, is rejected.

(AMIT RAWAL)
JUDGE

September 23, 2015
savita