

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

CR No. 7154 of 2013 (O & M)
Date of Decision : 2.7.2015

Madan LalPetitioner

Versus

Sanjay Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present : Mr. Harish Bhardwaj, Advocate, for the petitioner

Mr. R.S. Budhwar, Advocate, for respondent No. 1

M.M.S. Bedi, J.

This is defendant's revision petition against the order dated 28.9.2013, dismissing the application of the defendant/petitioner under Order 7 Rule 11 CPC, seeking the dismissal of the suit for possession by specific performance of an agreement to sell of the year 1992.

The application was filed on the ground that there is delay of 20 years in filing of the suit for specific performance, as such, the suit should be dismissed being not maintainable being barred by law, in view of the provisions of Order 7 Rule 11 (d) CPC. Learned counsel for the petitioner has submitted that under Section 3 of the Limitation Act, 1961, the plea of limitation is to be considered by the Court even if no plea is taken. He has also placed reliance on a judgment of this Court in **“Sardar Singh v. Jaswinder Singh, (2011-2) PLR 298”** in support of his contention

that suit patently barred by limitation can be rejected under Order 7 Rule 11

CPC.

Learned counsel for the petitioner has also argued that a similar suit for specific performance has earlier been filed by the plaintiff/respondent but the same was withdrawn on the basis of some settlement, which was challenged by the plaintiff before the trial Court, Appellate Court, High Court as well as before the Supreme Court but the Supreme Court had only given liberty to the plaintiff/respondent to seek recovery of the earnest money. He has submitted that at the most a suit for recovery could have been filed by the plaintiff/respondent, which was also, according to counsel for the petitioner, not maintainable.

Learned counsel for respondent No.1 has submitted that liberty has been given to the plaintiff/respondent to file a suit for recovery or to claim any other relief on the basis of compromise, which was otherwise legally permissible.

I have heard learned counsel for the petitioner and learned counsel for respondent No. 1 and have perused the entire material coming on record.

After hearing learned counsel for both the parties, I am of the considered opinion that the controversy which is required to be resolved by the trial Court after permitting the parties to lead evidence, is whether the suit of the plaintiff/respondent for specific performance or for recovery of earnest money is barred by time in context to the observations made by the Supreme Court in SLP No.12104 of 2010, which is a mixed question of law and fact. The suit of the plaintiff/respondent cannot, in said circumstances, be dismissed by rejecting the plaint merely on the ground that it is barred by

limitation. The plea taken by the defendant/petitioner in the application under Order 7 Rule 11 (d) CPC has to be adjudicated along with other pleas, taken in the written statement. It will also to be considered by the trial Court whether the suit of the plaintiff/respondent is maintainable for specific performance or it is maintainable for enhancement of the terms of the compromise, alleged to have been entered into between the parties.

The parties being at the issue of disputed question of facts, the interest of justice requires the parties to lead evidence and seek adjudication on the pleas of fact and law, raised in the pleadings.

No ground is made out for interference in the order dated 28.9.2013 dismissing the application under Order 7 Rule 11 CPC.

The petition is dismissed without prejudice to the rights of the parties to be determined on the basis of the evidence and pleadings of the parties. Since the controversy is pending since year 1995, it will be expedient in the interest of justice to desire from the trial Court that the suit will be decided within a period of one year from the date of receipt of certified copy of this order.

(M.M.S. BEDI)
JUDGE

2.7.2015
Ashwani