

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

RSA No.1607 of 2014(O&M)

Date of Decision:-January 13th, 2015

J. Khushalani.

.....Appellant.

Versus

General Manager, Faridabad Gas Power Station & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Appellant J. Khushalani in person.

JASWANT SINGH, J.(ORAL)

Plaintiff is in second appeal aggrieved against the concurrent findings recorded by the Courts below whereby his suit for declaration with a consequential relief of granting of benefits and post retirement benefits has been dismissed by rejecting his plaint on an application moved by the respondents under Order 7 Rule 11 CPC. The learned Civil Judge(Jr. Divn.), Faridabad had vide its judgment and decree dated 30.05.2013 has rejected the plaint of the plaintiff/appellant on two grounds which are as under:-

- “ (i) *the suit is prima facie barred by limitation.*
- (ii) *the suit is also barred by the principle of constructive resjudicata.*”

Learned lower Appellate Court vide its judgment and decree dated 16.01.2014 has affirmed the said findings and thus the present second

appeal.

Learned Counsel for the appellant has vehemently argued that the findings returned by the learned Courts below are perverse and are liable to be set aside and they are not sustainable in the eyes of law. It has been further argued by the appellant that the learned Courts below have wrongly dismissed the suit by invoking the provisions of Section 11 CPC which can only be decided after the entire evidence is led by the parties because it is a mixed question of law and fact. It has been further argued that the learned Courts below have not taken into consideration the fact that the appellant had come to know about the order dated 30.07.2003 only in the year 2012 and while framing his suit, a specific para was made in which he had specifically pleaded that the cause of action accrued to him in the year 2012 only i.e. when he came into knowledge of order dated 31.10.2003. Thus prayer was made for setting aside the impugned judgments and decrees.

After hearing learned Counsel for the appellant and perusing the paper book, this Court is of the considered view that the present second appeal is devoid of any merit and same deserves to be dismissed.

Admittedly, the appellant is a highly qualified person and is in government job and had filed numerous writ petitions in the year 2006 before this Court in which numerous orders were passed. It is further apparent that the appellant had also filed an SLP before the Hon'ble Supreme Court and the Hon'ble Supreme Court had passed a detailed order on 24.02.2011. It is further apparent that the prayer made by the petitioner in the said writ petitions was more or less same as that in the present case.

It is highly unbelievable that a person who has been litigating against the

department for such a long time was not aware of the order dated 31.10.2003. No doubt, the appellant in his plaint has pleaded that he came to know about the order dated 31.10.2003 in the year 2012 only. However, a mere assertion of the plaintiff itself is not enough to condone a serious gap of 9 years in filing the present suit. Thus, this Court is not hesitant in holding that the present suit is barred by limitation because as per Article 58 of the Limitation Act, the period of competent declaration is three years.

Furthermore, this Court is in concurrence with the findings returned by the courts below regarding the suit being barred by principles of *resjudicata* is concerned as stated earlier that the petitioner had filed numerous writ petitions seeking more or less the same relief which he is claiming in the present suit and as held earlier the petitioner was having knowledge of order dated 31.10.2003. Thus, the present suit is also hit by principles of constructive *resjudicata* and the findings returned by the courts below to that effect are also affirmed.

In view of the above, finding no question of law much less substantial question of law arising for determination in the present second appeal, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

13th January, 2015
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