

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

Regular Second Appeal No.5878 of 2014 (O&M)

Date of decision: 21.5.2015

Surinder Pal

... Appellant

Versus

Surinder Pal

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Daygeesh Kumar Bhatti, Advocate,
for the appellant.

1. To be referred to the Reporters or not? **Yes.**
2. Whether the judgment should be reported in the Digest? **Yes.**

RAJIV NARAIN RAINA, J.

This is plaintiff's second appeal. There can be no doubt that civil suit No.209 of 2009 dated 15th October, 2009 was filed beyond the period of limitation prescribed for suits for possession by way of specific performance of contract of an agreement to sell, which is three years. The sale agreement was executed between the parties on 2nd May, 2006 with the respect to the corpus. The suit was instituted 53 days beyond limitation and was time-barred.

It is not disputed that the stipulated date for execution and registration of the sale deed was fixed as 25th May, 2006 in the sale agreement. One day earlier, i.e., on 24th May, 2006, parties mutually agreed to extend the date of execution of the sale deed to 25th August, 2006 on

payment of additional amount of ₹ 30,000/-. The deal fell through. The action was brought beyond limitation. Both the Courts below have held that the suit is barred by limitation. Indeed, there was no other possible thing to do by a court of law.

Mr Daygeesh Bhatti appearing for the appellant has put forth a startling but interesting argument to save the suit contending that Order 7 Rule 6 CPC permits the plaintiff exemption from limitation where a suit is instituted after the expiration of the period prescribed by the law of limitation and, therefore, both the Courts fell in error in dismissing the suit as time barred. In order to understand the contention advanced on the strength of the provision cited, Order 7 rule 6 CPC is reproduced : -

“Order 7 Rule 6 CPC - Grounds of exemption from limitation law – Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed.

Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.”

Proviso to the above Order further provides that even if there is no explanation in the plaint itself, the Court may allow the plaintiff to claim exemption from the law of limitation. He submits that a valid explanation was pleaded as forthcoming from paragraph 12 of the plaint which is reproduced : -

“12. That the cause of action accrued to the plaintiff on 25.8.2006. In the mean time the only son of the plaintiff expired, wife of the plaintiff already expired, the plaintiff

suffered mental shock and agony and lost his mental stability and was under depression, he also remained under treatment of different doctors and was advised for the complete rest up till 15th day of October, 2009. In the mean time today the plaintiff saw the agreement for sale and immediately contacted his counsel who advised him to file the suit today itself and ground of exemption from limitation law is available to the plaintiff in such like suit. As such the principle of limitation is not applicable in the present suit.”

He argues that the respondent in his reply to para. 12 had made a simple denial and there is nothing on the record that the petitioner had not actually suffered as mentioned in para. 12 of the plaint. In his oral testimony, the petitioner explained that he remained under treatment of a private doctor namely Dr.Yashpal Puri and the cross-examination on the point 'led to nowhere'. Besides, the medical certificates issued by Dr Yashpal Puri bearing Mark 'A', 'B' and 'C' on the record are not contradicted by the respondent. The Courts below should have addressed themselves to the issue whether exemption under Order 7 Rule 6 CPC could be granted to the appellant and there has been failure to do so which has resulted in failure of justice.

Learned counsel relies on **Collector, Land Acquisition, Anantnag v. Mst. Katiji**; AIR 1987 SC 1353 to bring his case within the fold of the six principles culled out by the Supreme Court to examine delay condonation for the guidance of the courts, which read as follows : -

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very

threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side can not claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by restoring to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

In this argument, Mr Bhatti fails to address himself that *Mst. Katiji* is a case involving condoning of delay in filing appeals against decrees and the principles of Order 41 Rule 5 CPC would not apply to institution of civil suits under the Code of Civil Procedure, 1908.

The judicial statement on the law attaching to Order 7 Rule 6 is found succinctly stated in a Full Bench decision of 5 Hon'ble Judges of the Allahabad High Court in re: **B.Udeypal Singh v. Lakshmi Chand**; AIR 1935 Allahabad 946 and it would suffice to reproduce para. 5 and 31 without any superfluous comment, which in the reported text read as under: -

"5. And then following Ram Prasad's case held that the suit was barred by time. I can only interpret this observation

of the learned Judge as meaning that he accepts the fact that ₹ 50/- were paid, but he rejects the case put forward by the plaintiff, viz., that the amount was paid towards interest as such and that being so, the question arises as to the nature of this payment. I have said already that it cannot be payment of interest as such. A debt consists of two portions, namely, interest and principal, and this amount must therefore be taken as part payment of principal. It might be contended that such a finding would be opposed to the case put forward by the plaintiff, because the exemption from limitation was sought on the ground that a portion of interest was paid as such and the plaintiff should not be permitted to say that the suit is saved from limitation by reason of a part payment of principal. Under Order 7, Rule 6 where a suit is instituted after the expiration of the period prescribed by the law of limitation the plaintiff shall show the ground upon which exemption from such law is claimed. Upon a liberal construction of the plaintiff it must be deemed that the exemption was sought generally under Section 20, Limitation Act. Courts are bound to apply the law of limitation in suits whether it is pleaded or not and to dismiss a suit which is apparently beyond time. Conversely they are bound not, to dismiss, as barred, a suit which, on the face of it, is not barred. In *Hindu Miah v. Heramba Chandra (1911) 13 C.L.J 139, at p. 147*, Mukerji, J., went further and said :

If the plaintiff shows the ground of exemption, the requirement of the Code is satisfied, but this does not preclude the plaintiff from taking another and an inconsistent ground to get over the bar of limitation if he believes that the latter is the true ground. Consequently in the case before us the plaintiff-respondent is entitled to urge that the suit is not barred by limitation for a reason different from the one assigned in the plaintiff.

31. The reason for the constitution of a large Bench is that there has been some conflict of opinion in this Court on the proper interpretation of Section 20, Limitation Act. In

the plaint there was no mention as required by Order 7, Rule 6, that exemption from limitation was claimed on account of any acknowledgement in writing of the liability to pay, but exemption was sought fin the ground that the amount had been paid towards interest. Other subsidiary questions have also been argued before us, but we think that this Bench should dispose of only the main question of law on which there is a conflict of opinion, leaving other matters to be decided by the Bench concerned. Under Section 3, Limitation Act, it is the duty of the Court to dismiss a claim as time-barred if it is brought beyond the period prescribed in the schedule; but limitation may be saved if the plaintiff can bring himself within one of the exceptions. The burden therefore lies on the plaintiff to show that his case falls strictly within the scope of any such exception.” (*emphasis supplied*)

Thus, Order 7 Rule 6 provides that where a suit is instituted after the expiration of limitation, then the prescriptions in the Limitation law stand extended by operation of the proviso to Order 7 Rule 6 where Court may permit the plaintiff to claim exemption provided the plaint makes out a ground, upon which, exemption of law is claimed but these exemptions are not of the kind as explained in *Mst. Katiji (supra)* dealing with appeals but these exemptions are the ptotective exemptions in the Limitation Act, 1963 alone, disability to sue by reason of delay as are available, say, where a remedy is pursued in the wrong forum and in the meantime limitation prescribed expires then exemption would follow to relax the period misspent in litigation provided departure was bona fide and not for collateral purpose or oblique motive. Nor is there an acknowledgement in writing by defendant of plaintiff's continuing right to sue say by extending the cause of action by a written acknowledgent of debt though the original

cause of action became time barred against which the suit may not lie for want of limitation etc., then Order 7 Rule 6 can be of help provided exemption claimed is duly pleaded in the plaint and explained by such means as are guaranteed by the provisions Sections 14 and 20 in the Limitation Act, 1963.

There is no cogent and legally acceptable pleading in the suit to justify extension of the period of limitation. Reliance is placed on **Kalyan Mal Vs. Ahmad Uddin Khan** AIR 1934 Privy Council 208 and on **Shiv Shiv Tewari Vs. Ganesh Prasad Misra** AIR 1978 Allahabad 117 to contend that if the plaintiff's right or cause of action is apparently barred under the statute of limitation, it is his duty under Order 7 Rule 6 of the CPC to plead specifically in the plaint the grounds of exemption allowed by the Limitation Act upon which he relies to exclude its operation. The provisions of Order 7 Rule 6 of the CPC are mandatory as held by the Madras High Court in **Swarna Paper Cutting Works vs. M/s Indian Express (Madurai)**, 1999 (3) CTC 167, observing that the plaintiff has to show the grounds in the plaint itself on the question of limitation, which is a stringent requirement of pleading the saving grounds allowed by the law of limitation. The stringency of the original Order 7 Rule 6 of the CPC was mellowed down by adding a proviso to the provision by the amending Act 104 of 1976. Thereafter, by virtue of the proviso, a plaintiff is permitted to claim exemption from the law of limitation on any ground, not set out in the plaint so long as it is not inconsistent with the ground set out in the plaint, and this is the change in law recognized by the proviso. Resultantly, an amendment in pleading is not necessary to bring in a defence not pleaded,

but which defence is not inconsistent with the frame of the suit, as filed originally and evidence can still be led by the plaintiff to maintain the suit as filed within limitation. But this is not the position in the present case where the ground upon which exemption is claimed does not fall in any of the provisions from Sections 4 to 24 of the Limitation Act but on grounds of health.

It is not the case of the appellant that the cause of action was not final on 25th August, 2006 and continued alive. Therefore, the right to sue had expired on the date when the suit was presented. The pleadings in para. 12 do not constitute grounds for exemption under Order 7 Rule 6 CPC which are meant, as explained, for an entirely different purpose. Hence, there is no error of jurisdiction in the judgments and decrees of the Courts below which are upheld. The suit is dismissed as time barred.

As a last gamble, Mr Bhatti submits that if the suit was barred, the plaint should have been rejected under Order 7 Rule 11 (d) which includes in its bars, the law of limitation. He submits that it was the duty of the Court to have pointed out this fact in the beginning. This may not be untrue as it is the duty of the trial court to sift cases at the threshold and in appropriate cases reject or return the plaint as apparently barred by law for which no application by defendant under Order 8 Rule 11 of the Code is necessary. In para. 12 of the plaint, the plaintiff admitted that the cause of action had accrued to him on 25th August, 2006 and never recurred or acknowledged and the reasons for delay due to mental shock and agony suffered by the plaintiff were not germane or triable issues to be mechanically put through the motions of a protracted trial only to be proved

by evidence that the plaintiff remained under treatment of different doctors including Dr Puri who advised complete bed rest upto 15th October, 2009 when the suit was timed by its institution to overcome the bar of limitation. But when a suit is barred by law then reasons for further delay in instituting it become meaningless and of no consequence but was continued which deserves to be seen as a wanton exercise pursuing a non-*lis* put automatically through the mill of wasted adjudication. Besides, no such issue was struck by the Court on point of limitation and issue put to the throes of a trial when it ought to have been done. To this, I can only add, that the time wasted by the plaintiff in flogging a dead horse before the two Courts below is an irreversible damage and would not resuscitate the cadaver of the suit. The plaintiff was chasing a mirage, expecting a miracle to happen. As a matter of fact, the suit should never have been entertained and put to trial at all when the cause of action was time-barred as explicit on the face of the plaint itself and for the court not to have permitted it to meander on a misadventure by the lower courts which has resulted in a failure of duty enjoined by law. The court should have dismissed the suit at the threshold, if not by the time the defence plea was taken in the written statement that the suit was barred by limitation.

However, since the dismissal of this appeal is at the first hearing and without putting the opposite party to notice, I would not impose costs on the appellant. Forget about substantial, there is not even a whisper of a question of law in this appeal. I would only say that this Court was taken aback by the novel argument raised for which time to study had to be granted to Mr Bhatti by a Court granted adjournment for him to reflect upon

the startling argument raised by him in the Grounds of Appeal but for which, glad to say, he is the wiser now.

(RAJIV NARAIN RAINA)
JUDGE

May 21, 2015

Paritosh Kumar