

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 129 of 2016

Date of Decision: 11.05.2016

Balram

... Petitioner(s)

Versus

Jitender Singh Chauhan

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Sandeep Kotla, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting aside order dated 8.11.2013, passed by learned Civil Judge (Senior Division), Gurgaon, whereby application, filed by the defendant for rejection of the plaint under Order 7 Rule 11 CPC, was accepted.

Learned counsel for the petitioner submitted that the Court below has taken erroneous view while interpreting that period of limitation starts from the date when the payment was made and not from the date when legal notice demanding payment was sent, whereas

suit filed by the petitioner was well within the period of limitation because respondent never denied the receipt of payment made by petitioner and prayed that order dated 8.11.2013 be set aside.

Having considered the submissions made by learned counsel for the petitioner; appraisal of the record of the case and the impugned order, this Court is of the considered view that the Court below has already taken the correct view that in fact plaintiff had filed suit for mandatory injunction for issuance of direction to the defendant to pay a sum of ₹ 13,37,235/- along with interest. For that purpose, plaintiff was required to file suit for recovery by fixing the requisite Court fee, which has not been done by the petitioner and on that account plaint is liable to be rejected. Otherwise also, plaintiff was not entitled to recover any amount as the suit was not filed within limitation period because last payment was made by the defendant in the month of February, 2008 and thereafter suit was filed on 26.4.2011 i.e. after the expiry of three years. At any rate, as plaintiff had filed suit for recovery of certain amount, he was required to file suit for recovery only and not a suit for mandatory injunction. The suit has also not been filed within the period of limitation and the Court below has rightly accepted the application.

Consequently, present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

May 11, 2016
"DK"