

Civil Revision No.4477 of 2016 (O&M)

{ 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.4477 of 2016 (O&M)

Date of Decision: July 26, 2016

M/s Accord Cotsyn Ltd., Chandigarh

...Petitioner

Versus

M/s Alchemist Holdings Ltd., Chandigarh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Anil Kshetarpal, Senior Advocate with
Mr.Piyush Aggarwal, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

Petitioner is aggrieved of the impugned order dated 18.5.2016, whereby the petitioner has been impleaded as a defendant on an application filed by the plaintiff under Order 1 Rule 10 CPC in a suit seeking declaration and recovery instituted on 22.9.2011.

Mr.Anil Kshetarpal, learned Senior Counsel assisted by Mr.Piyush Aggarwal Advocate, for the petitioner submits that the suit is

not only simpliciter suit for declaration but recovery of the amount also

and the application had been moved as the other contesting respondents, namely, defendant Nos.1 and 2 had taken the objection qua non-impleadment of the petitioner as defendant. The written statement by the aforementioned defendants was filed on 14.9.2012, whereas the application under Order 1 Rule 10 CPC had been instituted on 17.11.2015 and, thus, the alleged claim of recovery is, *ex-facie*, time barred. The Court has not taken into consideration the same, rather negated the aforementioned plea. He further submits that the last transaction was of 2009 and the impleadment of the petitioner would not relate back to the filing of the suit in the year 2001 in view of the provisions of Section 21 of the Limitation Act and, thus, urges this Court for setting-aside of the impugned order.

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

For the sake of brevity, Section 21 of the Limitation Act reads thus:-

“21. Effect of substituting or adding new plaintiff or defendant.—

(1) Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so

made a party:

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.”

I am of the view that the trial Court ought to have noticed the aforementioned provisions of law as the same would apply to the newly added defendant from the date when he has been impleaded and, therefore, the observation qua the same being time barred is rendered obiter. The petitioner shall take all the possible objections in the proposed written statement to be filed vis-a-vis the maintainability and limitation in terms of the provisions of Section 21, *ibid*, which shall be seen by the trial Court at the final stage.

With the aforementioned observations, the impugned order

is modified.

Civil Revision No.4477 of 2016 (O&M)

{ 4 }

Revision petition stands disposed of.

**July 26, 2016
ramesh**

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No