

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.5901 of 2016

Date of Decision.14.12.2016

Felcon Chemicals

.....Petitioner

Vs

The Bhogpur Cooperative Sugar Mills Ltd.

.....Respondent

Present: Mr. Bhriugu Dutt Sharma, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The respondent-plaintiff on 11.02.2011 filed the suit with
following relief:-

“Suit for declaration to the effect that the plaintiff is entitled to recover an amount of ₹1,57,32,279/- (Rs. One Crore Fifty Seven Lacs Thirty Two Thousand Two Hundred Seventy Nine only) which includes difference of rate, loss, damages, penalty charges a the rate of ₹2/- per quintal per week, interest, penal interest, costs and other expenses; etc. due to non-lifting of 31500 quintal. Molasses sold to the defendant at the rate of ₹750/- per quintal.

With consequential relief of mandatory injunction directing the defendant to pay an amount of ₹1,57,32,279/- (Rs. One Crore Fifty Seven Lacs Thirty Two Thousand Two Hundred Seventy Nine only) along with interest pendente lite and further interest @12% per annum.”

By virtue of application seeking amendment of the plaint moved on 24.09.2014 i.e. beyond three years, the petitioner-plaintiff sought amendment of the plaint to convert the same in suit for recovery along with interest on court fee of ₹3,58,400/- which has been allowed by the trial

Mr. Sharma, learned counsel appearing for the petitioner-defendant submits that the application was barred by law of limitation but the Court below has erroneously allowed the same. The Court below has kept the issue/question of limitation open without realizing the fact that the application was moved at the stage of plaintiff's evidence. The application is hit by the provisions of Order 4 of the Code of Civil Procedure, thus, urges this Court for setting aside the order under challenge.

This Court had issued notice of motion for 09.09.2016 but the report of the registry was that the respondent-plaintiff was evading service and this Court on 07.10.2016 recorded the service as complete and posted the case for hearing today i.e. 14.12.2016. Today again, there is no representation for the respondent. Accordingly, I proceed to decide the revision petition.

I have heard learned counsel for the petitioner and appraised the paper book. For the sake of brevity, it would be apt to reproduce Order 4 Rule 1 of CPC as under:-

“1. Suit to be commenced by plaint.- (1) Every suit shall be instituted by presenting a plaint in duplicate to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).”

The suit originally filed tantamounts to recovery of the amount as damages without payment of court fee. Order 4 CPC prescribes that the suit to be commenced by plaint, shall comply with all the provisions of Order 6 and 7 CPC and as per provisions of Rule 11 of Order 7 CPC, the application is liable to be dismissed if it is not within limitation. The

plaintiff was in the knowledge of factum of claim yet intentionally did not pay the court fee nor any application under Section 149 CPC was moved.

In view of such situation, the Court could not have kept the question of limitation open. It was an open and shut case as the suit was instituted on 11.02.2011 and the application is dated 24.09.2014.

For the reasons aforementioned, the order under challenge is hereby set aside and the application seeking amendment of the plaint is dismissed. Consequently, the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

December 14, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No