

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

**CR No.5936 of 2016 (O&M)
Date of Decision : 29.09.2016.**

Kharati Lal Marwaha

.....Petitioner

Versus

Gurdial Singh

..... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

Present : Mr. G.S.Simble, Advocate for the petitioner.

ARUN PALLI, J. (Oral)

Vide order being assailed, dated 18.03.2016, rendered by the trial Court, the application moved by the petitioner-defendant, under Order 7 Rule 11 of Civil Procedure Code, has since been dismissed.

All what was sought to be urged by the petitioner-defendant is that the suit filed by the respondent-plaintiff, seeking a decree for specific performance of the agreement was apparently barred by time. For, Section 54 of the Limitation Act requires that such a suit is to be filed within three years from the date fixed for the performance of the contract. Whereas, in the matter in hand, parties had entered into an agreement to sell dated 16.12.2010, and the date fixed for execution of the sale deed was 15.05.2011, and the suit was instituted on 08.07.2015. Learned counsel for the petitioner has placed reliance upon two decisions of the Hon'ble Supreme Court **State of Gujarat VS. M/s. Khothari & Associates 2015(3) Apex Court Judgments 592 (S.C.)** and **Fatehji & Company & Anr. Vs.**

L.M. Nagpal & Ors. 2015(2) Apex Court Judgments 329 (S.C.).

Ex facie, the case set out by the respondent-plaintiff is that the defendant had also promised to hand-over the actual physical possession of the suit property, after culmination of the ejectment proceedings against his tenant, and that is how the plaintiff did not file the suit earlier. And now when the defendant has obtained an order of ejectment, plaintiff requested the defendant to perform his part of contract, but to no avail. Thus, it is maintained that cause of action had accrued to the plaintiff on 16.12.2010, when the parties had entered into an agreement to sell, and also a day prior to the institution of the suit when the defendant finally refused to get the sale deed registered in favour of the plaintiff, and hand-over possession of the suit property. Needless to assert, in context of the provision of Order VII Rule XI of C.P.C., only the averments set out in the plaint are required to be seen. Further, Article 54 of the Limitation Act postulates that the limitation to institute a suit for specific performance of the contract is three years from the date fixed for its performance or if no such date is fixed, when the plaintiff has noticed that performance is refused.

That being so, in my considered view the trial Court rightly observed that the issue as to whether the suit filed by the respondent-plaintiff is indeed barred by time involves determination of facts as also application of law.

In so far as the decision rendered by the Hon'ble supreme Court in the case of **M/s. Kothari & Associates** (supra) the same has no bearing on the matter in hand, for all what was held by the Hon'ble Court was that in

terms of Section 3 of the Limitation Act, 1963, it was incumbent upon the Court to ascertain as to whether that the suit filed by the plaintiff is within limitation, notwithstanding whether such a plea is raised by the defendant. Likewise, the decision in **Fatehji & Company & Anr.** (supra) is hardly of any assistance to the petitioner, for in the said case the agreement to sell was entered into between the parties on 02.07.1973, and the date fixed for execution of the sale deed was 02.12.1973. It was observed that it was not a case where the parties had postponed the performance of the contract to a future date without fixing any specific or future date for performance. And, even the last extension for the period of 6 months with effect from 01.08.1976, to perform the contract, expired on 01.02.1977. Therefore, the suit filed by the plaintiffs on 29.04.1994, after a period of 17 years was apparently beyond limitation. Such is not the position in the matter in hand.

Learned counsel for the petitioner could not point out as to how the conclusion arrived at by the trial Court was either erroneous or suffered from any material illegality.

No interference is warranted in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India. The petition being devoid of merit is, accordingly, dismissed.

29.09.2016

*Rajan/Manoj Bhutani***(ARUN PALLI)**
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No