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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6532-2014

Date of decision : 14.07.2016

Amarjit Singh and another

... Petitioners

Versus

Sarabjit Sharma

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Namit Gautam, Advocate
for the petitioners.

Mr. J.S. Lalli, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The petitioners-defendants are aggrieved of the dismissal of the application moved under Order 7 Rule 11 CPC seeking rejection of the plaint on the ground that the suit was *ex facie* barred by law of limitation.

Mr. Namit Gautam, learned counsel appearing on behalf the petitioners-defendants submits that the respondent-plaintiff in respect of with regard to the oral agreement to sell dated 20.02.2000 instituted a suit for permanent injunction in the month of May 2003. An application seeking dismissal of the suit, by invoking the provisions of Section 41-H of the Specific Relief Act, was moved and the same was allowed vide order dated

19.04.2007 and the suit was dismissed. No explanation has come forth in not filing the suit within three years thereafter, whereas in the instant suit seeking specific performance to the agreement to sell has been instituted on 22.10.2011. It is in this background that the application, aforementioned, was moved, but the trial Court erroneously and perversely dismissed the application. Even the previous round of the litigation, the alleged date of refusal in the year 2003 and therefore, the suit could not have proceeded, being barred by law of limitation, thus, urges this Court for setting aside the impugned order and rejection of plaint.

Mr. J.S. Lalli, learned counsel appearing on behalf of the respondent-plaintiff submits that for the adjudication of the application under Order 7 Rule 11 CPC, the averments in the plaint have to be seen. There is a categoric pleading in the paragraph Nos.5 and 6 that after dismissal of the previous suit the respondent-plaintiff had been approaching the defendant for execution of the sale deed as time was not essence in contract and once, on final refusal three days before filing of the the suit, the suit aforementioned was instituted on 22.10.2011, thus, urges this Court for affirming the findings, under challenge.

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

For the purpose of determining the limitation, where time is not essence, provisions of Article 54 of the Limitation Act have to be seen. No doubt that there is a categoric pleading with regard to the subsequent efforts being allegedly done by the respondent-plaintiff for execution and registration of the sale deed. In my view, the factum of previous pleadings

cannot be taken as a defence for rejection of the plaint, but certainly, would be a matter of concern in case on filing of the written statement by taking up objection (preliminary) qua limitation, the issue of limitation, if framed, is required to be treated as preliminary.

It is matter of record that so far as the written statement has not been filed, on filing of the written statement within a period of one month from today and replication within a period of two weeks thereafter. The trial Court shall frame the issues including issue of limitation and shall treat the same as preliminary. Thereafter, it shall afford 2-2 opportunities to the parties to lead the evidence in support of their defence/pleas and thereafter shall decide the issues of limitation.

With the aforesaid observations, the impugned order, under challenge, is hereby modified and accordingly, the revision petition stands disposed of.

14.07.2016
yogesh

(AMIT RAWAL)
JUDGE