

CR-8908-2015

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-8908-2015

Date of decision : 06.01.2016

Azad Singh Gulia

... Petitioner

Versus

Bhai Ram and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Shailendra Sharma, Advocate
for the petitioner.

REKHA MITTAL. J.

The present petition filed under Article 227 of the Constitution of India lays challenge to orders dated 19.09.2013 and 29.09.2015 passed by the Civil Judge (Junior Division), Bahadurgarh whereby the application for condonation of delay in filing the suit and the civil suit for specific performance of agreement to sell filed by the petitioner have been dismissed.

In brief, the facts relevant for disposal of present petition are that the petitioner filed a suit for specific performance of an agreement to sell dated 19.11.2005 in regard to land measuring 3000 square yards for a sale consideration of ₹42,75,000/-. As per the agreement, the sale deed was to be executed by the defendants on or before 18.03.2006. As per plea of the plaintiff (petitioner herein), he had paid an amount of ₹39,25,000/-

by 17.03.2006 towards sale consideration. The suit was filed on 17.04.2009 and an application for condoning delay in filing the suit under Section 5 of the Limitation Act, 1963 was preferred. The learned trial Court after notice to the respondents/ defendants dismissed the application for condonation of delay vide impugned order dated 19.09.2013. Thereafter an application was filed by the petitioner for framing issue on the question of limitation and while disposing of the said application, the learned trial Court dismissed the suit vide order dated 29.09.2015 impugned in the petition.

Counsel for the petitioner would contend that as the respondents entered into an agreement to sell the suit land on the basis of an agreement to sell in their favour and thus did not have the ownership rights in the suit property and had received a substantial amount of ₹39,25,000/- out of sale consideration of ₹42,75,000/- by 17.03.2006, the learned trial Court should not have dismissed the suit without framing an issue on the question of limitation and permitting the petitioner to adduce evidence in that regard. It is further argued that the petitioner has suffered an irreparable loss for non-adjudication of his claim on merits.

I have heard counsel for the petitioner and perused the records.

Counsel for the petitioner is fair enough to concede that Section 5 of the Limitation Act providing for condonation of delay does not apply to suits and the same is applicable only to condone delay in filing application or appeal. Counsel for the petitioner is not in a position

to point out any factual, legal or jurisdictional error in the order dated 19.09.2013 passed by the learned trial Court whereby his application for condonation of delay has been dismissed. As a matter of fact, at the time of disposal of application for condonation of delay, the Court below should have addressed to the issue as to whether the plaintiff can be allowed to proceed with the case despite his failure to institute the suit within limitation as he failed to file the suit within three years from the date fixed for execution of the sale deed. The very fact that the petitioner himself filed an application for condonation of delay is an admission on his part that the suit filed by him is beyond the period of limitation. The Court is enjoined upon to examine the question of maintainability of suit and that of limitation even without any defence being raised in the written statement to this effect.

Order VII Rule 11 provides for rejection of plaint in case the suit is not within limitation. Section 3 of the Limitation Act 1963 provides for bar of limitation. A relevant extract from Section 3 of the Limitation Act reads as under:-

“3. Bar of limitation.-(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.”

A plain reading of the aforesaid extract leaves no manner of doubt that it is mandatory for the Court to dismiss a suit, appeal and application which is instituted after prescribed period of limitation even if

no such defence has been set up by the contesting party. There is no denial that limitation for filing the suit in the present circumstances of the case was three years with effect from 18.03.2006. As the petitioner instituted the suit clearly beyond the period of limitation, contention of the petitioner that either the trial Court should have framed an issue on the question of limitation or allowed him an opportunity to adduce evidence is misconceived. This apart, as the petitioner filed an application for condonation of delay knowing fully well that the suit is barred by limitation, framing of an issue or adducing evidence would be an empty formality at the cost of wastage of precious time of the Court. In view of the above, I do not find any error much less illegality in the impugned orders as would call for intervention. The loss to the petitioner as he allegedly parted with a huge amount of approximately ₹40 lacs in favour of the defendants cannot enure to his benefit to seek continuation of the proceedings.

In view of what has been discussed hereinabove, finding no merit, the petition is dismissed in limine. No order as to costs.

(REKHA MITTAL)
JUDGE

January 06, 2016.
Davinder Kumar