

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

C.R. No. 135 of 2017

Date of Decision:- 07.04.2017

Narinder Gupta

...Petitioner

vs.

Nishu Bala and others

...Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Atul Aggarwal, Advocate,
for the petitioner.

Mr. Rajbir Singh, Advocate,
for the respondents.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 14.12.2016 passed by Additional Civil Judge (Senior Division), Sangrur whereby the application filed by petitioner-defendant No. 3 for treating issue No.3 relating to limitation and issue No. 4 relating to the plaintiff for not coming to the Court with clean hands has been dismissed.

Briefly the facts of the case are that respondent No.1/plaintiff filed a suit for mandatory injunction directing petitioner/defendant No.3 and proforma respondents No. 2 and 3 to declare the result of respondent No.1-plaintiff of CMLT (IInd Semester), to issue certificate of DMLT (IInd Semester) and also to hand over the detailed marks sheet to respondent No.1 as well as for recovery of ₹ 5 lacs on account of damages caused by

petitioner-defendant No. 3 and proforma respondents-defendants No. 1 and 2 for spoiling her career and causing of physical and mental harassment.

After issuing notice in the suit, written statement was filed by petitioner-defendant No.3. During pendency of the suit, the petitioner filed an application under Order 14 Rule 2 CPC for treating issue No. 3 relating to limitation and issue no. 4 relating to respondent No.1-plaintiff for not coming to the court with clean hands as preliminary issues and to decide these issues first.

Reply to the application was filed but ultimately the application was dismissed vide order dated 14.12.2016 which is subject-matter of challenge in the present petition.

Learned counsel for the petitioner submits that by holding the question of limitation as question of law and facts, application has been dismissed. Learned counsel also submits that the suit was liable to be rejected on the ground of limitation alone. The issue of limitation is purely a question of law and it requires to be decided as a preliminary issue as leading evidence on other issues would be a futile exercise. Learned counsel also submits that certain material facts have been concealed and as such the respondent-plaintiff had not approached the Court with clean hands. At the end, learned counsel for the petitioner submits that order passed by the trial Court is totally a non-speaking order and application has wrongly been dismissed only on the ground that issue of limitation is a mixed question of law and facts.

Learned counsel for the respondents submits that a detailed order has been passed while dismissing the application. It is a matter of

trial as to whether the plaintiff had approached the Court with clean hands and it is a matter of evidence to be appreciated and the issue cannot be decided at the initial stage. Learned counsel for the respondents also submits that the evidence cannot be led partially on this issue and it would be a futile exercise which will lead to duplication of evidence and would prolong the litigation.

Heard arguments of learned counsel for the parties and have also perused the impugned order and other documents available on the file.

The issue for consideration before this Court is as to whether the issue of limitation can be treated as preliminary issue and can be decided at the initial stage or on appraisal of evidence.

In **Ramrameshwari Devi and others v. Nirmala Devi and others 2011(3) R.C.R. (Civil) 932**, while dealing with Order 14, Rule 2, observed that sub-rule (2) of Order 14 refers to the discretion given to the court where the court may try an issue relating to the jurisdiction of the court or bar the suit created by any law for the time being in force as a preliminary issue.

The controversy pertaining to the provisions contained in Order 14 Rule 2 come up for consideration before this Court in ***Major S.S. Khanna v. Brig. F.J. Dillon, AIR 1964 SC 497*** wherein it was ruled thus: -

"Under Order 14, Rule 2 where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issue of law only, it shall try those issues first, and for

that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all issues in a suit should be tried by the Court: not to do so, especially when the decision on issues even of law depends upon the decision of issues of fact, would result in a lop-sided trial of the suit."

Be it stated, the aforesaid pronouncement was made before the amendment of the Code of Civil Procedure in 1976.

In *Ramesh D. Desai and others v. Bipin Vadilal Mehta and others*, 2008 (1) R.C.R. (Civil) 921 while dealing with the issue of limitation, the Court opined that a plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. The Court further proceeded to state that a plea of limitation is a mixed question of fact and law. On a plain consideration of the language employed in sub-rule (2) of Order 14 it can be stated with certitude that when an issue requires an inquiry into facts it cannot be tried as a preliminary issue. In the said judgment the Court opined as follows: -

"13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in *Major S.S. Khanna v. Brig. F.J. Dillon* and it was held as under: (SCR p. 421)

"Under Order 14 Rule 2, Code of Civil Procedure where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the

decision of issues of fact, would result in a lopsided trial of the suit.”

Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the above quoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue."

The issue of limitation is a mixed question of law and fact which can be treated as preliminary issue. Issue of law has not been defined in the Code. Normally, if answer to an issue is determinable on the basis of some principle of law, then issue is called an issue of 'law' as observed in **Daljit Singh vs. Joginder Singh Sekhon, 1984(2) RCR (Rent) 482**, and if the parties want to lead evidence on an issue, that ceases to be an issue of law. Under the old Code, all the issues of law were required to be tried as preliminary issues but according to new rule, the issues of law as mentioned in sub-rule (2) can be tried as preliminary issues. In the new rule 2(1) the word “shall” has been replaced by the word “may”. It shows that a discretion has been given to the Court to try the issue as a preliminary issue or not according to the circumstances of each case. Mixed issues of law and fact cannot be treated as 'preliminary' issues.

Although learned counsel for the respondents has opposed the

submissions made by learned counsel for the petitioner but ultimately he submits that in case some specified period is given to the trial Court to decide the issue of limitation, then he shall have no objection. By considering the submissions made by learned counsel for the parties and the stage of the suit as it is at the initial stage, the question of limitation can be treated as preliminary issue. The issue of limitation is there as it is clear from the pleadings of the parties in the suit that the suit is barred by limitation. It is the duty of the Court to decide the issue of limitation at the outset. The suit was for mandatory injunction to direct defendants to declare the result of the plaintiff and for recovery of ₹ 5 lacs as damages caused by defendants on account of spoiling her career and for causing physical and mental harassment. It was disputed question between two parties. As per stand of defendants, the plaintiff had failed in one examination in the year 2008 and her studies could not be continued as the result was withheld by the University. It was alleged in the written statement that the suit was time barred and the plaintiff has not approached the Court with clean hands. As per case of the plaintiff, she was pursuing the relief before the Consumer Court and her case was allowed by District Consumer Forum but in the first appeal, State Consumer Commission returned the complaint filed by the plaintiff to be presented before the Civil Courts. It was ordered that time spent in pursuing the proceedings before the Consumer Forum and Consumer Commission was to be discounted for the purpose of limitation.

According to plaintiff, her suit was within period of limitation.

As per stand of defendant in the written statement, the suit of plaintiff was

time barred and plaintiff cannot be allowed to pursue the same. By considering the period of limitation, as a preliminary issue, an application was moved to decide the case on the issue of limitation first.

Accordingly, by considering the submissions made by learned counsel for the petitioner and having no objection from other side, the trial Court is directed to reconsider the application of the petitioner and by treating the issue of limitation as preliminary issue, the same be decided within a period of two months from the date of treating that issue as preliminary issue.

Revision petition is disposed of accordingly.

April 07, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes