

CR-4082-2017 (O&M)

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

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**CR-4082-2017 (O&M).
Decided on: July 13, 2017.**

Darshan Tyagi

.. Petitioner(s)

VERSUS

H.D.F.C. Bank Ltd. And others

.. Respondent(s)

*** * ***

CORAM: HON'BLE MR.JUSTICE M.M.S.BEDI

*** * ***

**PRESENT Mr.K.S.Jetley, Advocate,
for the petitioner.**

M.M.S. BEDI, J. (ORAL)

A money decree has been obtained against the defendant-petitioner by the respondent-Bank alleging that the petitioner had admitted his liability by making statements before the police.

The money decree passed against the defendant-petitioner could have been challenged by him by filing an appeal before the District Court by affixing the requisite Court fee but instead of availing the said remedy, the defendant-petitioner had filed an application for review. On dismissal of the said application for review the defendant had approached this Court by filing a revision petition. The said revision petition was disposed of on 1.2.2017, setting aside the order dated 1.11.2016 and a direction was given to the Additional Civil Judge (Sr.

Divn.), Ambala, to re-consider the application afresh within a period of two weeks and pass necessary orders in accordance with law.

The learned Addl. Civil Judge (Sr. Divn.), Ambala, has again dismissed the application taking into consideration the provisions of Section 114 and Order 47 Rule 1 of the Code of Civil Procedure vide order dated 8.3.2017, considering all the pleas raised by the defendant- petitioner holding that the scope of review was limited and the same cannot be allowed to be an appeal in disguise.

In view of above circumstances, this Court is prima facie of the opinion that the remedy for the defendant-petitioner, in the present circumstances, is to file the statutory first appeal against the decree raising all the questions of law and fact before the Appellate Court. It will not be appropriate for this Court to allow the review application of the petitioner on the grounds which are always open to the defendant-petitioner in the first statutory appeal. Even the legal pleas raised before this Court can be raised in the appeal.

A similar question arose in **Regional Manager Vs. Abdul Hamid Guroo, AIR 2004 J & K 87**, regarding maintainability of a review application wherein the defendant had taken up the plea that suit was barred by time and it was held that if a suit is barred by time the remedy is appeal against the decree and not review or revision.

In the present case the defendant-petitioner is aggrieved by the judgment and decree passed against him in a suit which he claims to be not maintainable without any declaration regarding illegalities and

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acts/omissions on his part. The trial Court has considered the review application second time pursuant to the directions of this Court by passing a detailed order dated 8.3.2017. Determining the legality or illegality of the observations made in the said judgment would tantamount to exercising the powers of first appellate Court whereas the defendant-petitioner has not availed the remedy of filing of first appeal under Section 96 CPC read with Order 41 Rule 1 CPC.

After taking into consideration all the circumstances of the case, it appears that an attempt is being made by the defendant to seek relief by evading the payment of court fee by filing first appeal as mentioned above but the rule of law cannot be avoided by the defendant despite the fact that there may be a number of apparent factual and legal errors in the judgment of the civil Court. As the defendant has been availing the remedy by approaching the civil Court as well as before this Court, the period spent by him in filing the petitions before this Court and seek adjudication of the review application could be deemed to be a bona fide step to seek justice and the period spent can be condoned to enable the defendant-petitioner to file appeal.

The revision petition is disposed of with an observation that in case the defendant-petitioner files an appeal within a period of one month from today against the judgment and decree dated 12.8.2016, the same will be considered and the period spent by him in seeking review will be deemed to be a period under Section 14 of the Limitation Act. All the pleas which have been raised before this Court or in the review application

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could be raised by the petitioner in the appeal filed by him in accordance with law.

(M.M.S. BEDI)
JUDGE

July 13, 2017.
rka

Whether speaking / reasoned
Whether reportable:

Yes / No
Yes / No