

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 4507 of 2017

Date of Decision: 13.7.2017

Vijander Das

.....Petitioner

Versus

Sunny Saini

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rohan Mittal, Advocate
for the petitioner.

ANITA CHAUDHRY, J

This revision has been filed under Section 115 of the Civil Procedure Code read with Article 227 of the Constitution of India and impugns order dated 28.4.2017. The application filed under Order 14 Rule 2 CPC has been dismissed by the Additional Civil Judge.

The facts would be essential. A suit for recovery of Rs. 3,28,000/- was filed in March 2014 on the plea that the defendant had approached the plaintiff's father for financial help of Rs. 2,00,000/-. The plaintiff's father advanced a loan of Rs. 1,70,000/- on 17.3.2011. The defendant gave two post dated cheques as security for repayment. The remaining amount of Rs. 30,000/- was given in cash after a few days and another post dated cheque of Rs. 30,000/- was issued. The defendant failed to repay the amount. The father of the plaintiff died sometime later. The plaintiff presented the cheques since the amount was not paid but all the cheques were dishonoured. Legal notice was sent and thereafter a suit was

The defendant filed the written statement and issues were framed on 15.7.2015. The issue of limitation was not framed. The defendant moved an application in February 2016 for framing of additional issue regarding limitation. The additional issue was framed on 2.2.2016. Thereafter the defendant moved an application under Order 14 Rule 2 CPC for treating the issue of limitation as preliminary.

In reply to the application, the plaintiff had pleaded that the cheques which were given, were dated 18.5.2013 onwards which were dishonoured and the suit was well within time. The Trial Court noted that the case was at the stage of defendant's evidence and could be decided effectively after considering the evidence and dismissed the application.

Counsel for the petitioner cites ***Pandurang Dhondi Chougule and others versus Maruti Hari Jadhav and others 1996 AIR (SC) 153*** and ***Kamlesh Babu and others versus Lajpat Rai Sharma and others 2008 (Sup) AIR (SC) 1931*** and urges that the lower Court had gone wrong in not treating the issue of limitation as preliminary.

The counsel was asked to give the status of the case and place the zimni orders to show when the written statement was filed and when the objections were taken. The counsel has expressed his inability as he did not have the zimni orders.

However, from the record it becomes clear that the issues were framed in 2015. The impugned order also notices the fact that the case is now fixed for defendant's evidence. The issue of limitation in this case will have to be determined only after the parties have led their evidence. The question of limitation is inextricably mixed question of law and fact and the

facts. The plaintiff has already led his evidence. The case is fixed for defendant's evidence. I find no illegality in the order passed by the Court below. The judgments referred by the petitioner are not applicable to the facts of the present case.

The revision is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

July 13, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No