

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 248

Civil Revision No.6463 of 2016 (O & M)
Date of Decision: April 20, 2017

Baby

..... PETITIONER

VERSUS

Gian Chand Rattan

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. M. L. Saini, Advocate, for the petitioner.

Mr. Gian Chand Rattan, respondent in person.

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Jaspal Singh, J

1. Challenge in this revision petition is to order dated July 12, 2016 passed by the Civil Judge (Junior Division), SAS Nagar, vide which, a preliminary issue with regard to limitation for filing of the suit has been decided, holding that suit of the plaintiff is within the period of limitation.

2. The facts giving rise to the instant revision petition are that the respondent-plaintiff filed a suit for recovery of an amount of ₹ 1 lac with deemed amount of interest, as per receipt –cum- agreement dated May 05, 2011 and April 05, 2012, accrued thereon with interest alongwith future interest @ 19% per annum from the date of filing of suit till final realization of the amount. As per the averments contained in the plaint, defendant –

Baby daughter of Chander Dutt approached Satya Devi wife of Gian Chand

Rattan (respondent – plaintiff) on May 05, 2011, accompanied by her mother Nirmal Devi and younger sister Bindu, and requested for a family personal loan of ₹ 1 lac as they were in need thereof, for redemption of the pledged gold jewelry of her younger sister Bindu. Ultimately, they succeeded in inducing Satya Devi, wife of plaintiff, to advance personal loan of ₹ 1 lac @ ₹ 6,000/- per month as interest from the date of advancement of loan i.e. May 05, 2011. At that time, petitioner – defendant had assured that she will return the amount of ₹ 1 lac alongwith interest @ ₹ 6,000/- per month. However, at that time, respondent – plaintiff was only in possession of ₹ 50,000/- which were advanced to defendant on May 05, 2011 whereas balance amount of ₹ 50,000/- was advanced on April 05, 2012 on the similar terms & conditions with regard to the interest. But, after receipt of the amount, nothing was paid either as principal or as interest thereon. Ultimately, the plaintiff was constrained to serve notice dated March 13, 2015 calling upon the defendant to make payment of the amount outstanding against her but it did not fetch any reply. It was only thereafter that plaintiff filed the suit for recovery.

3. Upon notice, suit was resisted by the defendant who denied the averments and also raised preliminary objections including that suit of the plaintiff is not within limitation. The issue with regard to limitation was stated as preliminary issue which has been decided in favour of the plaintiff and against the defendant vide impugned order dated July 12, 2016. Aggrieved against the said order, defendant has approached this Court by way of instant revision petition.

4. While assailing the impugned order, it has been contended by learned counsel for the petitioner – defendant that misappreciation of

resulted into miscarriage of justice. Infact, suit is clearly barred by time. The loan was alleged to have been advanced to the defendant by the plaintiff to the tune of ₹ 50,000/- on May 05, 2011 and another sum of ₹ 50,000/- on April 05, 2012. At the most, cause of action can be said to have accrued to the defendant on account of non-payment of the amount on Aril 05, 2015 as the limitation provided for recovery is only three years from the date of accrual of cause of action.

5. Learned counsel for the petitioner has further contended that the trial court has also committed an error while relying upon the judgments rendered in **The H.P. State Industrial Development Corpn. Ltd. vs. Kesri Roller Flour Mills & others, 2002 AIR (H.P.) 34** as well as **Pallav Sheth vs. Custodian, 2001(7) SCC 549** which are not applicable to the facts and circumstances of the case in hand. Infact, the suit of plaintiff is covered by Sections 24 & 27 of the Limitation Act, 1963 (for short, 'Limitation Act'), according to which, date of accrual of cause of action is the date when money was received by the defendant from the plaintiff i.e. April 05, 2012. The instant suit has been filed by the plaintiff on July 13, 2015 which is clearly barred by 99 days.

6. While concluding his arguments, it has been submitted by learned counsel for the petitioner that since suit of the plaintiff has been instituted beyond the prescribed period of three years, it is clearly time barred and as such, findings recorded by the trial court deserve to be reversed. Consequently, suit of the plaintiff is liable to be dismissed on this score alone.

7. On the other hand, while controverting the various submissions made by learned counsel for the petitioner, it has been argued

in consonance with the evidence available on file as well as settled canons of law. The amount of ₹ 50,000/- was advanced to the defendant by the plaintiff on May 05, 2011 whereas another sum of ₹ 50,000/- was advanced on April 05, 2012. Since the defendant did not make the payment, either of principal amount or of interest settled between the parties, plaintiff served a notice dated March 15, 2015. But, despite that fact, defendant did not make the payment of amount outstanding against her. Thus, cause of action, if any, accrued to the plaintiff on March 05, 2015 when notice was issued. The learned trial court has rightly relied upon the judgments rendered in case of **H.P. State Industrial Development Corporation Limited (supra)**, in which it has been clearly observed that amount of loan becomes immediately recoverable upon service of legal notice upon the defendant. Similar observation was also made by the Hon'ble Apex Court in case of **Pallav Sheth (supra)**. Infact, both the judgments are fully applicable to the facts and circumstances of the case in hand. As such, impugned order does not call for any interference by this Court and deserves to be upheld.

8. After bestowing due consideration to the rival submissions made by learned counsel for the petitioner as well as respondent in person, and scrutinizing impugned order dated July 12, 2016, this Court finds legal as well as factual weight in the submissions made by learned counsel for the petitioner.

9. Undoubtedly, the loan is alleged to have been advanced on May 05, 2011 and April 05, 2012 to the tune of ₹ 50,000/- each i.e. totaling ₹ 1 lac. The last payment was made on April 05, 2012. No doubt, there is a recital in the receipt that defendant shall pay interest @ ₹ 6,000/- per month on the amount so advanced, but here it would be pertinent to mention that

plaintiff, either by way of interest or the principal amount. Meaning thereby, cause of action accrued when the second installment of ₹ 50,000/- was paid i.e. on April 05, 2012 and the instant suit has been filed on July 13, 2015 which is beyond the period of three years.

10. As far as judgment in the case of **H.P. State Industrial Development Corporation Limited (supra)** is concerned, it is not applicable in the facts and circumstances of the case in hand. In the said case, suit for recovery was filed by the Institution with regard to debts due to the banks and financial institutions under the provisions of Recovery of Debt Dues to the Banks and Financial Institutions Act, 1993. Evidently, in the case in hand, plaintiff is not an institution as specified in Section 44(1)(i) to (v) of the Companies Act. The facts of the above said case are entirely different than that of the case in hand. Moreover, there were a number of other documents executed in between the firm and the corporation which is not the case in hand. Similarly, as far as the observations made in case of **Pallav Sheth (supra)** are concerned, proceedings were under the Contempt of Courts Act, 1971, for which, there is a specific provision contained in Section 17 of the Limitation Act. So, this Court is of the considered view that learned trial court has mis-construed the facts while applying the observations made in the above referred authorities.

11. Adverting to the facts of the case in hand, as has been discussed above, the loan payment as made on April 05, 2012 and the said date is the date on which cause of action is said to have accrued to plaintiff and he was required to file the suit for recovery, if any, within a period of three years under Section 24 of the Limitation Act, but, suit has been filed on July 13, 2015 which is clearly beyond the prescribed period of three

12. In the light of what has been discussed above, the findings recorded by the trial court are reversed; impugned order dated July 12, 2016 is set aside and issue No.1 with regard to limitation is decided against the plaintiff and in favour of defendant. Consequently, suit pending before the trial court also stands dismissed.

13. No order as to costs.

April 20, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No