IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6801 of 2017 (O&M)
Date of Decision: 03.10.2017

M/s OTIS Elevator Company (I) Ltd.

...Petitioner(s)

Versus

Man Mohan Mangla

...Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Harneet Singh Oberoi, Advocate
for the petitioner(s).

ANITA CHAUDHRY, J.

This revision is directed against the order dated 16.08.2017 passed by the Civil Judge (Senior Division), Panchkula, who dismissed the application filed by the defendant under Order 7 Rule 11 C.P.C. It would be relevant to refer to the facts. The plaintiff is a legal practitioner. He filed a suit for recovery of over Rs.2 lacs on account of the legal fee payable to him by the defendants. It is claimed that the annual professional fee was payable w.e.f. 2001-02 to 2011-12. The suit was filed in October,2016.

The defendants filed an application for rejection of the plaint as the suit was barred by the limitation. The trial Court dismissed the application holding that there was no ground to reject the plaint on account of limitation or territorial jurisdiction. The relevant observation are made in Para-4 which reads as under:-

"*At the very outset of the discussion it would be apt to state that it is settled law that while considering an application under order 7 rule 11 CPC only the plaint has to be looked into. Perusal of the plaint shows that the plaintiff has filed the instant suit seeking relief of recovery of Rs.2,37,600/- from the defendants on account of legal fee payable by them to the plaintiff. Further, perusal of the bills placed on the judicial file reveals that atleast two of them (bill No.1222 and bill No.2592) are dated 12.03.2011 and 31.03.2012 respectively. This has to be juxtaposed with annexure P-12 (Form No.16-A) which shows that the name of deductor is defendant no.1, the name of detuctee is that of the plaintiff, while annexure P-12 bears the verification date to be 26.10.2013. It also bears the initials of defendant No.4. Clearly, this amounts to acknowledgment, in writing having been initialed, having been made within the period of limitation of 3 years pertaining to these two specific bills (dated 12.03.2011 and 31.03.2012). Meaning thereby that from 26.10.2013, the period of limitation commenced afresh qua these two bills, the suit was filed on 24.10.2016. Clearly, it emerges that atleast qua these two bills, the suit has been filed within the limitation period. It is a different matter that as to whether the remaining bills can be recovered or not on account of the limitation period, however these two bills certainly reflect that the suit of the plaintiff has been preferred within the limitation period. So, there is no ground to reject the plaint on account of any bar of limitation. Further, as far as second ground, regarding defendants No.2 & 4 not residing within the jurisdiction of the Court and consequently the Court does not have jurisdiction where defendants No.2 & 4 are concerned, it would be apt to state here that as per section 20, the word "or" has been mentioned after each clause thereof. Further, as per section 20 the suit can be instituted where the cause of action wholly or in party arises, perusal of the plaint*

> *shows that the cause of action arose at Panchkula, from where the plaintiff tendered profession legal services to the defendants, whereafter various bill were raised. Further, defendant No.1 has its office at house No.604, Sector-09, Panchkula also. Further, defendant No.2 is the Managing Director of defendant No.1, while defendant No.4 is the Senior Manager, who also initialed annexure p-12. In the first place the suit is maintainable at Panchkula, as the cause of action arose at Panchkula. Also company/corporate bodies acts through its agents, in these circumstances, suit is very much maintainable in Panchkula. As far as authorities cited by learned counsel for applicant, are concerned, the same have been gone through, the legal ratio culled out is not in doubt, however as reflected in the light of the aforesaid discussion, the suit is not barred by limitation, this Court has justification to entertain and try the present suit. In light of the aforesaid discussion, I hereby dismiss this application".*

Counsel for the petitioner with all his vehemence at command relies upon '***Sardar Singh Vs. Jaswinder Singh and another (2011)162 PLR 298'***, ***'Vijayalakshmi Vs. Hari Hara Ginning and Pressing, Nandigaon 1993(3) ALD 624'*** and ***'ACTAL Vs. India Infoline Limited'*** and urges that the claim for recovery of the lawyers fee is being made from the year 2001 onwards and the suit has been filed in 2016 and on the very face of it the suit is not within the limitation. Counsel submits that this Court in *Sardar Singh's* case (supra) had held that the question of limitation cannot be said to be a mixed question of law and fact and a suit for specific performance could be filed within 3 years, it was not within time and the plaint could be rejected. Counsel also submits that the plaintiff was relying upon the TDS certificate/Form No.16-A but in *ACTAL's* case (supra) it has been held that the issuance of TDS certificate would not amount to acknowledgment within the meaning of Indian Evidence Act.

I have considered the submissions and gone through the authorities referred to by the petitioner but none of them are applicable to the facts of the present case. The question of limitation is a mixed question of law and fact. The trial Court had noted that for some of the bills the suit was maintainable. The plaint cannot be rejected because some bills may be barred by limitation. It is for the trial Court to examine and record findings after a complete trial.

There is no merit in the present petition and is dismissed.

(ANITA CHAUDHRY)
JUDGE

October 03, 2017
ps-I

Whether Reasoned/Speaking **Yes/No**
Whether Reportable **Yes/No**