

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

CR-3240-2018

Date of Decision: May 15, 2018

M/s Indo Asian Auto and another

...Petitioners

Versus

M/s Happy Steels Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Rakesh Bhatia, Advocate,
for the petitioners.

ARUN PALLI, J. (ORAL)

Defendants are in revision against the order, dated 04.05.2018, rendered by the Civil Judge (Junior Division), Ludhiana, whereby their application to consider and decide the issue as regards suit being instituted beyond the period of limitation, has since been declined.

Ex facie, the defendants had even earlier moved an application under Order VII Rule 11 CPC, to reject the plaint as the suit filed by the plaintiff was time barred. However, the said application was declined by the Trial Court, pursuant to an order, dated 21.03.2018 (Annexure P-4). Being aggrieved against the said order, the defendants filed a revision before this Court, which was dismissed as withdrawn, vide order dated 21.04.2018, and the petitioners were granted liberty to move an appropriate application for deciding the issue as regards limitation, as preliminary issue. Since the said application has now been declined, vide impugned order, the defendants are before this Court.

Ex facie, the Trial Court rejected the application moved by the petitioners/defendants as the suit was already at the stage of recording their

evidence. Rather, they had been provided a last opportunity to adduce their evidence, but instead they moved an application to consider and decide the issue as regards limitation, as preliminary issue. Concededly, the issues were framed as back as on 26.10.2015. If the petitioners/defendants indeed required the said issue to be considered as preliminary issue, they ought to have moved an appropriate application at that stage itself. And not when the suit has made a tangible progress, and nearly three years have gone by. Further, a reference to the provisions of sub-rule (2) of Order XIV Rule 2 CPC, would not also advance the case of the petitioners either, as all what it postulates is; 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 an issue of law only, it may try that issue first if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force. Apparently, it is not the case of the petitioners that the Civil Court lacked jurisdiction to examine the matter in issue. Nor it was their case that the suit filed by the respondent was barred under any law, except that the suit was beyond limitation. Whether the suit filed by the plaintiff is indeed time barred, is again a mixed question of law and fact, which of course shall be determined after the parties to the *lis* adduce their respective evidence. And that being so, even reliance placed upon a decision of this Court in Meharban and another v. Punjab Wakf Board, Ambala Cantt. & another, 1998 (3) Civil Court Cases 269 (P&H), is also misplaced. Therefore, at this stage of the proceedings, the application moved by the petitioners, to consider and decide Issue No. 6, as preliminary issue, was wholly misconceived. Apparently, the application moved by the petitioners

lacked both, i.e. merits as also the bonafides. It appears that the application moved by the petitioners was only to delay the proceedings further.

That being so, I am dissuaded to exercise the revisional jurisdiction under Article 227 of the Constitution of India. The revision being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

May 15, 2018
P Kapoor

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO