

In the High Court of Punjab and Haryana at Chandigarh

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Civil Revision No.3345 of 2018

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Date of decision:18.5.2018

Salindro Kaur and another

.....Petitioners

v.

Canara Bank and others

.....Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rajiv Kumar Saini, Advocate for the petitioners.

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Inderjit Singh, J.

Salindro Kaur and M/s Deepak Gramin Udyog-petitioners/defendants No.1 and 2/Loanee have filed this civil revision petition against Canara Bank-respondent/plaintiff and Geeta and Ved Parkash (since deceased)-proforma respondents/Guarantors under Article 227 of the Constitution of India for setting aside the impugned order dated 12.4.2018 (Annexure-P.4) passed by the learned Civil Judge (Junior Division), Jagadhri, Distt. Yamuna Nagar, vide which application filed under Order 7 Rule 11 read with Section 151 CPC for rejection of plaint was dismissed in illegal, erroneous manner and without considering the provisions of law. It has further been prayed that during the pendency of present petition further proceedings before the learned Civil Judge (Junior Division), Jagadhri, may be stayed in the interest of justice.

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I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that Canara Bank-plaintiff filed suit against Smt. Salindro Kaur and M/s Deepak Gramin Udyog-defendants/loanee and Geeta, Ved Parkash-defendants/Co-obligents/Guarantors for recovery of ₹4,32,770/-, ₹2,39,900/- in OCC Limit and ₹1,92,870/- in term loan and it has also been prayed that decretal amount be realised from the defendants by way of sale of mortgaged property and hypothecated machinery and other assets. Defendant No.1 moved an application under Order 7 Rule 11 CPC to reject the plaint by stating that the suit is time barred. The plaintiff contested this application.

The learned Civil Judge (Junior Division), Jagadhri, vide impugned order dated 12.4.2018 dismissed the application by holding that the question of limitation is mixed question of fact and law which cannot be decided without appreciating the evidence led by the parties. On limitation separate issues shall be framed. Otherwise also, the plaintiff-Bank is asking for recovery of the amount by selling the mortgaged property for which limitation is of 12 years. The plaintiff during the evidence will show that whether the suit is within limitation or not and secondly, whether the limitation period is three years or 12 years. At this stage, the plaint cannot be rejected. Further more, the fact regarding limitation is mixed question of fact and law which cannot be decided without appreciating the evidence.

A perusal of the record shows that it is not a simpliciter suit for recovery, rather, the plaintiff is claiming recovery by way of sale of mortgaged property etc. Therefore, from the above discussion, I find that

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the impugned order dated 12.4.2018 passed by the learned Civil Judge (Junior Division), Jagadhri, is correct as per law and no illegality has been committed by the lower Court while passing the impugned order which does not require any interference from this Court.

Therefore, finding no merit in this civil revision petition, the same is dismissed.

May 18, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No