

In the High Court of Punjab and Haryana at Chandigarh

.....

Civil Revision No.3521 of 2018

.....

Date of decision:24.5.2018

Satpal and another

.....Petitioners

v.

Richa Arora

.....Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Sourabh Goel, Advocate for the petitioners.

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Inderjit Singh, J.

This civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 22.3.2018 (Annexure-P.7) passed by the learned Civil Judge (Junior Division), Ludhiana, vide which application dated 6.4.2016 (Annexure-P.4) filed under Order 7 Rule 11 CPC for rejection of CS No.1539 of 2016 dated 4.4.2016 (Annexure-P.1), being barred by limitation has wrongly been dismissed in a mechanical manner without any application of judicial mind and without appreciating the law laid down by this Court in Narender Kumar Nangia v. Harjinder Pal Singh, 2018(1) Law Herald 337.

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

From the record, I find that Richa Arora-plaintiff (respondent

herein) filed suit against Satpal-Defendant (petitioner No.1 herein) for a decree for possession as owner by way of specific performance on the basis of agreement to sell dated 23.12.2011.

During the pendency of suit, an application under Order 7 Rule 11 CPC has been filed by the defendant alleging that the present suit has been filed on the basis of a forged and fabricated agreement. It has also been stated that the plaint is vague and does not disclose any cause of action and is not properly valued either for the purposes of Court-fees or for jurisdiction. The respondent has stated that application is not maintainable as it has been filed merely to delay the proceedings of the case and there is no ground for dismissal of the suit itself without proper trial and evidence. It has been stated that as per the said agreement to sell, the applicant-defendant has received the entire sale consideration and possession has been delivered to the respondent-plaintiff. It has further been stated that the date for execution and registration of the sale deed has been kept open and a valid cause of action arises in favour of the respondent-plaintiff and the present suit has been filed immediately upon refusal by the applicant to perform the said agreement to sell and the same is within the period of limitation.

At the time of arguments, learned counsel for the petitioners only presses the argument regarding limitation period by arguing that in the plaint it is written that the first cause of action has arisen to the plaintiff on 23.12.2011 at the time of execution of the agreement.

It has also been stated that the plaintiff several times requested the defendant to perform his part of the contract. The respondent-plaintiff

has specifically pleaded in paragraph 9 of her plaint that despite her numerous requests to the applicant for getting the sale deed registered, he refused in the second week of March 2016 to perform his part of the contract. It has further been stated that the cause of action is continuing one.

As it is admitted that no date had been fixed for executing the sale deed, therefore, the cause of action will arise in the present case on the day of refusal of the execution of the sale deed. The limitation period will start when the defendant had refused to execute the sale deed and not from the date of the agreement.

In the present case, as per the case of the plaintiff in the second week of March 2016, the defendant had refused to execute the sale deed. Therefore, the period of limitation is to be considered from the date of refusal. The cause of action will arise from that date. Otherwise also, it is settled law that cause of action is to be seen from the averments of the plaint as a whole. Further more, for deciding the application under Order 7 Rule 11 CPC, the averments of the plaint are to be seen only.

Next I find that the plea of limitation is mixed question of fact and law which is to be decided by the trial Court after the parties will produce the evidence.

Keeping in view the above facts, I find that the impugned order passed by the learned Civil Judge (Junior Division), Ludhiana, dismissing the application under Order 7 Rule 11 CPC is correct as per law and no illegality has been committed by the lower Court while dismissing the application. The impugned order does not require any interference from this

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Court and the same is upheld.

Finding no merit in this civil revision petition, the same is accordingly dismissed.

May 24, 2018.

(Inderjit Singh)
Judge

hsp

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