

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

**CR No.4126 of 2017 (O&M)
Date of Decision :29.11.2018**

Vijay Singh Rana

....Petitioner

VERSUS

Amarjit Singh Sandhu

...Respondent

BEFORE : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Sandeep Gahlawat, Advocate for the petitioner.

Mr. Chander Shekhar, Advocate for the respondent.

B.S. WALIA, JUDGE (Oral)

1. Revision petition has been filed under Article 227 of the Constitution of India praying for setting aside of order dated 10.5.2017 (Annexure P-1) whereby the learned Civil Judge (Junior Division)-cum-JMIC, Amritsar dismissed the application filed by the petitioner-defendant under Order 7 Rule 11(d) read with Section 151 CPC in Civil Suit No.2689 of 2016 in case titled as Amarjit Singh Sandhu vs. Vijay Singh Rana.

2. Short argument of learned counsel for the petitioner-defendant is that the respondent-plaintiff filed a civil suit alleging that he had good relations with the petitioner-defendant since the year 2009 and that he had been advancing money to the petitioner-defendant by way of loan as and when requested for by the petitioner-defendant and for repayment of which

cheque No.291250 dated 23.11.2013 for Rs.10,00,000/- was issued by the petitioner-defendant in favour of the respondent-plaintiff. Learned counsel contended that perusal of the plaint revealed that it has not been mentioned as to on which date the loan had been advanced therefore, rejection of the application as not disclosing any cause of action, was legally unsustainable besides, the civil suit was barred since the averment in the plaint were of good relations between the respondent-plaintiff and of respondent-plaintiff advancing loan to the petitioner-defendant from time to time with effect from the year 2009 whereas the suit was filed on 7.11.2016. Therefore, calculated from the year 2009 civil suit filed in the year 2016 was time barred.

3. On the other hand, learned counsel for the respondent reiterated the reasoning given in the impugned order and prayed for dismissal of the revision petition.

4. I have considered the submissions of learned counsel for the parties and am of the view that in considering an application under Order 7 Rule 11 read with Section 151 CPC the only thing which is to be considered is the averments made in the plaint. Paragraph No.3 of the plaint reads as under:

“That the plaintiff demanded back the said loan amount of Rs.10,00,000/- from the defendant and the defendant in lieu of return of the above said friendly loan and in discharge of his legal debt and liability issued cheque bearing No.291250 dated 23.11.2013 worth Rs.10,00,000/- to be drawn on State Bank of India, Ram Tirath Road, Amritsar in favour of the plaintiff. At the time of issuance of the above said cheque the defendant assured the plaintiff that the cheque is good for payment and the same would be encashed as and when presented in the bank for encashment.”

5. A perusal thereof reveals that the petitioner-defendant issued a cheque to the respondent-plaintiff in discharge of a legal debt drawn on State Bank of India in favour of the respondent-plaintiff. “Whether the cheque dated 23.11.2013 was issued by the petitioner-defendant in favour of the respondent-plaintiff in discharge of legal debt” is a matter which can be considered only on the basis of evidence to be led in the case. Besides, the question “whether the loan had been advanced in the year 2009 and therefore, the suit was barred by limitation on account of having been filed in the year 2016” is also a matter which is to be considered in the context of evidence to be led by the parties especially in view of the fact of cheque dated 23.11.2013 having allegedly been issued by the petitioner-defendant in favour of the respondent-plaintiff. Hon’ble the Supreme Court in **Vaish Aggarwal Panchayat versus Inder Kumar and others 2015(4) R.C.R (Civil) 167** was pleased to hold that a civil suit could not be dismissed under Order 7 Rule 11 (d) of CPC on the ground of being barred by limitation without proper pleadings, framing of issue on limitation and taking evidence, as the question of limitation was a mixed question of fact and law and on ex-facie reading of the plaint it could not be held that the suit was barred by time. Relevant extract of the same is reproduced as under:

“After so stating, the Division Bench opined that in the facts of the said case, the suit could not be dismissed as barred by limitation without proper pleadings, framing of issue on limitation and taking evidence, for question of limitation is a mixed question of fact and law and on ex-facie reading of the plaint it could not be held that the suit was barred by time.”

6. The learned trial Court dismissed the application on the ground that while deciding an application under Order 7 Rule 11 (d) of CPC, only the contents of the plaint were to be considered and that the same revealed that cheque dated 23.11.2013 was issued by the petitioner-defendant for a sum of Rs.10,00,000/- in favour of the respondent-plaintiff in discharge of the loan having been raised by the petitioner-defendant and that in the circumstances, the specific date in the column of cheque being 23.11.2013 it could not be presumed that the amount was given as loan in the year 2009 and therefore, the suit was barred by limitation.

7. Accordingly, in the light of the position as noted above as also the decision of Hon'ble the Supreme Court in **Vaish Aggarwal Panchayat's case (supra)**, I do not find any ground whatsoever warranting interference with the well reasoned order passed by the learned trial Court.

8. Accordingly, finding no merit in the revision petition, the same is dismissed.

November 29, 2018
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No