

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

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CR No.4750 of 2017

Date of Decision: December 06, 2018

Smt.Komal Rani and others

.....Petitioner(s)

versus

Smt. Gayatri Devi and others

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE RAJ MOHAN SINGH

Present: Mr. S.S.Goripuria, Advocate and
Mr. Sant Lal Barwala, Advocate for the petitioner(s).

Mr. Vivek Gupta, Advocate and
Mr. Parshant Sethi, Advocate
for the respondent.

Raj Mohan Singh, J. (Oral)

The petitioner has challenged the order dated 29.04.2017 passed by Additional Civil Judge (Senior Division), Hansi, whereby application under Order 7 Rule 11 read with Section 151 CPC filed by the petitioner-defendant for rejection of plaint was dismissed.

A suit for possession by way of specific performance was filed by the plaintiff-respondent on the basis of of agreement to sell dated 26.07.2006. The target date for execution of the sale

deed was recited as 25.01.2007. The suit came to be filed on 11.01.2017. The reason for dismissing the application is stated to be failure on the part of the defendant-petitioner to clear bank loan. Since the property was not released, therefore, the same was treated to be an impediment in due execution of agreement to sell by way of filing suit for specific performance.

In **Vishwanath Sharma Vs. Shyam Shanker Goel and another 2007(10) SCC 595**, it was held that contingency in respect of pre-condition from obtaining permission from the authority could not have prohibited filing of suit within the period of limitation, as the same cannot be treated to be a condition for grant of specific performance. There was no such impediment on the transfer. Lack of permission cannot act as absolute bar on a decree being passed. At the most, it may have an effect on the execution if ultimately permission is not granted. The permission from the authority is not a condition precedent for grant of decree of specific performance. The aforesaid analogy if applied to the present case would negate the theory as propounded by the plaintiff while filing the suit only on 11.01.2017 in respect of the cause of action which accrued to him till 3 years from the date of target date i.e. 25.01.2007. The view expressed in **Vishwa Nath Sharma's** case (supra) was also endorsed in subsequent judgment of the Apex Court in **Fatehji and Company and anr. Vs. L.M. Nagpal and Ors, 2015(2) RCR(C) 999.**

Para Nos. 6 and 7 of the judgment are to the following

effect.

X X X X X

6. *We considered the rival submissions. The specific performance is claimed of a written agreement of sale dated 2.7.1973 and as per the terms the performance of the contract was fixed till 2.12.1973. The defendants by subsequent letters dated 7.4.1975, 1.10.1975 and 1.8.1976 sought for extension of time to enable them to obtain permission of lessor and the last extension of six months expired on 1.2.1977. In view of Order VII Rule 11(a) and 11(d) the Court has to satisfy that the plaint discloses a cause of action and does not appear to be barred by any law. Article 54 of the Limitation Act stipulates that the limitation for filing the suit for specific performance of the contract is three years from the date fixed for the performance or if no such date is fixed, when the plaintiff has noticed that performance is refused.*

7. *The fact that the plaintiffs were put in possession of the property agreed to be sold on the date of agreement itself would not make any difference with regard to the limitation of filing the suit for specific performance. In fact both the courts below have rightly held that Article 54 of the Limitation Act does not make any difference between a case where possession of the property has been delivered in part performance of the agreement or otherwise. In the same way the courts below have also concurrently held even if any permission is to be obtained prior to the performance/completion of the contract, the mere fact that the defendants have not obtained the said permission would not lead to inference that no cause of action for filing the suit for specific performance would arise. Further it is also not the case for postponing the performance to a future date without fixing any further date for performance. The last extension for a period of*

six months w.e.f. 1.8.1976 sought for by the defendants expired on 1.2.1977. The present suit seeking for specific performance was filed by the plaintiffs on 29.4.1994, much beyond the period of three years.

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In Narinder Kumar Nangia Vs. Harjinder Pal Singh, **2018(1) Law Herald 337**, this Court has held that once a limitation starts running from first accrual of cause of action, it will not stop by subsequent enlargement of cause of action as per averments in the plaint. Since the first cause of action is the target date on which the sale deed was to be executed therefore, alleged subsequent act in not perfecting the title of the vendor would not curtail cause of action in favour of the plaintiff to file the suit within a period of limitation i.e. 3 years from the target date under Article 54 of the Limitation Act. Limitation of 3 years starts when the right to sue first accrues. Once the time start running with the accrual of right then it would not stop. Under Article 58 of the Limitation Act, the cause of action was barred by limitation in a declaratory suit as the time does not stop to run once it has started to run. The suit for declaration is governed by under Article 58 of the Limitation Act and the period is 3 years when the right to sue first accrues. The time cannot be extended by the plaintiff on the plea of obtaining certified copy or by giving notice to the defendant.

Successive violation of the right will not give rise to fresh cause of action and the suit will be beyond limitation. A clear departure from the language of Article 120 of 1908, Act of the

Limitation has been made in Article 58 of 1963 Act. The word “first” has been designedly used between the word “sue” and “accrued”.

It is obligatory on the part of the Court to see whether suit is barred under limitation even if the plea of limitation was not set up as a ground of defence by the defendant. Section 3 of the Limitation Act is mandatory and puts an onerous duty on the Court to see whether suit is within limitation or not.

In view of the aforesaid facts emerging on record, there is no escape but to reject the plaint on the threshold of Order 7 Rule 11 CPC. This Revision Petition is allowed. The impugned order is set aside. Normal consequences to follow.

December 06, 2018
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[RAJ MOHAN SINGH]
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes/No