

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

**CR No.6296 of 2018
Date of Decision : 19.09.2018**

Kartar Singh

....Petitioner

VERSUS

Nachattar Singh and another

...Respondents

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

Present: Mr. P.K.S. Phoolka, Advocate for the petitioner.

B.S. WALIA, JUDGE (ORAL)

1. Revision petition has been filed challenging order dated 23.8.2018 (Annexure P-1) whereby the learned Additional Civil Judge (Sr. Division), Bathinda dismissed the application filed by the petitioner-defendant under Order 7 Rule 11 CPC in Civil Suit No.CS/308/2018 in case titled as “Nachattar Singh and another versus Kartar Singh”.

2. Brief facts of the case are that the petitioner-defendant filed an application under Order 7 Rule 11 CPC on 21.7.2018 in the suit filed by the plaintiff-respondents for recovery of Rs.88,400/- on the basis of agreement of mortgage with possession dated 28.2.2015 allegedly executed by the petitioner-defendant on the averments that the agreement was extended on 28.2.2015 therefore, suit for recovery could have been filed within three years i.e. upto 27.2.2018 but the same had been filed on 28.2.2018, therefore, the plaint was liable to be rejected on the said ground alone. The same was opposed by the plaintiff-respondents on the ground that the suit had been filed on the basis of agreement of mortgage with possession dated 28.2.2015 executed by the petitioner-defendant and in the circumstances, suit for recovery could have been instituted upto 28.2.2018. Moreover, as per agreement, the petitioner-defendant had agreed to execute the registered mortgage deed on or before 27.2.2018.

Therefore, technically also the limitation would commence from 27.2.2018 and

not from the date of agreement.

3. The learned trial Court dismissed the application by taking into account that the plaintiff-respondents had relied upon agreement dated 28.2.2015 and as per the said agreement for mortgage with possession of the property, the petitioner-defendant was to execute the registered mortgage deed on or before 27.2.2018. Therefore, it could not be said that limitation had commenced from 28.2.2015. Moreover, even if 28.2.2015 was the date of execution of agreement, while computing period of time for filing suit, limitation would commence from 29.2.2015. Thus, computed, period of three years for instituting the suit would be upto 28.2.2018 i.e. the date on which the suit was filed and not 27.2.2018.

4. I have considered the submissions of learned counsel for the petitioner and am of the view that the date on which the agreement was executed for money advance i.e. 28.2.2015 has to be excluded. Thus, limitation commenced from 29.2.2015 and not from 28.2.2015. Thus, computed, period of limitation for filing the suit would expire on 28.2.2018 and not 27.2.2018. Even otherwise limitation is a mixed question of law and fact as held by Hon'ble the Supreme Court in **Balasaria Construction (P) Ltd. Versus Hanuman Seva Trust and others (2006) 5 Supreme Court Cases 658**.

5. In the circumstances, I do not find any infirmity with the well reasoned order passed by the learned Additional Civil Judge, (Sr. Division), Bathinda. Accordingly, the revision petition is dismissed in limine.

September 19, 2018
ps

(B.S. WALIA)
JUDGE

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