

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7475 of 2015(O&M)
Date of Decision-08.01.2018

Narender Kumar Nangia ... Petitioner
Versus
Harjinder Pal Singh ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Puneet Bali, Senior Advocate with
Mr. Paramveer Singh, Advocate
for the petitioner.

Mr. Rajiv Kataria, Advocate with
Mr. R.K. Bindal, Advocate and
Mr. Anurag Bindal, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 29.09.2015 passed by Civil Judge (Junior Division), Gurgaon vide which application under Order 7 Rule 11 CPC filed by the petitioner in Civil Suit No.48NK dated 08.02.2015 titled S. Harjinder Pal Singh Vs. Narinder Nangia and another was dismissed.

[2]. Plaintiff filed a suit for specific performance, possession and permanent injunction. The suit was filed on 08.02.2012. Para Nos.29 and 30 of the suit are to the following effect:-

“29. That it is submitted that the plaintiff has been always ready and willing and is still ready and willing to fulfill its obligation as contained in the said agreement to sell dated 26.07.2007, but it is the defendant No.1 having malafide,

ulterior and greedy intention refused to perform his part of the contract. The defendant No.1 further knowingly and deliberately misrepresented to the plaintiff and by giving false assurances all through out. The plaintiff has got the entire funds available with it in order to incur all expenses for the stamp duty and registration charges required for execution of the sale deed and thus there is no impediment at the end of the plaintiff in fulfilling its obligations.

30. The cause of action arose for the first time on 26.07.2007 when the plaintiff and defendant No.1 entered into a written contract vide agreement to sell. The cause of action again arose on December 2008, when the defendant No.1 on misrepresentation took back the original documents from the plaintiff. The cause of action arose on June 2008, January 2009, February 2010 and on various dates when the plaintiff enquired about the fate of the NOC from the authority. The cause of action again arose on 04.07.2011 when the plaintiff for the first time came to know that the defendant No.1 had mortgaged the suit property with defendant No.2 and there are cases pending in Ld. Debt Recovery Tribunal and Hon'ble High Court and on inquiry the defendant No.1 refused to get NOC from HSIDC and execute the sale deed. The cause of action again arose in favour of the plaintiff and against the defendant when on 16.01.2012 the plaintiff came to know that both the defendants are trying to dispose off the suit property in favour of a third party in order to deprive the plaintiff of its right and interest under the agreement to sell. The cause of action is still continuing and subsisting."

[3]. Defendant No.1/petitioner filed an application under Order 7 Rule 11 CPC preliminary on the ground that the plaintiff does not disclose any cause of action and therefore, the plaintiff is

liable to be rejected under Order 7 Rule 11(a) CPC. Defendant No.1 relied upon Article 54 of the Limitation Act to contend that the suit is time barred as the plaintiff seeks to enforce the alleged agreement to sell dated 26.07.2007. Defendant No.1 also assailed the plaint on other grounds i.e. the plaintiff has not paid the Court fee for the relief claimed and also the alleged agreement to sell being unregistered.

[4]. Learned Senior Counsel for the petitioner submitted that the plaintiff filed a suit for specific performance and permanent injunction in respect of property bearing Industrial Plot No.64, Sector-6, Industrial Estate, CH. Devi Lal, IMT Manesar, District Gurgaon measuring 1012.5 sq. mtrs. Plaintiff/respondent sought issuance of direction against the defendant/petitioner to execute the sale deed in his favour. Defendant/petitioner appeared in the suit and thereafter, filed an application for rejection of the plaint primarily on the ground that under Article 54 of the Limitation Act, the suit is time barred and the alleged agreement to sell dated 26.07.2007 cannot be enforced. The suit is liable to be dismissed for want of proper Court fee as well as the agreement being unregistered in nature.

[5]. By relying upon para Nos.29 and 30 of the plaint, learned Senior Counsel contended that the suit does not disclose any cause of action and as per averments in the aforesaid paragraphs, the cause of action itself is barred by limitation.

Plaintiff himself has projected that the cause of action arose for the first time on 26.07.2007 when the plaintiff and defendant No.1 entered into an agreement to sell. The cause of action again arose on December 2008 when defendant No.1 on misrepresentation took back the original documents from the plaintiff. The cause of action arose on June 2008, January 2009, February 2010 and on various dates, when the plaintiff enquired about the fate of No Objection Certificate from the Authority. Plaintiff further pleaded that the cause of action again arose on 04.07.2011 when the plaintiff for the first time came to know that defendant No.1 had mortgaged the suit property with defendant No.2 and on inquiry, came to know that defendant No.1 had refused to get NOC from the Department. Learned Senior Counsel further submitted that according to Order 7 Rule 1 CPC, particulars are mandatorily required to be contained in the plaint. As per Clause (e) of Rule 1 Order 7 CPC, cause of action and when it arose has to be specifically pleaded in the plaint. Plaintiff himself has pleaded in para No.30 of the plaint that the cause of action arose for the first time on 26.07.2007 and then again arose on December 2008 and so on.

[6]. Learned Senior Counsel relied upon **State of Punjab and another Vs. Balkaran Singh, (2006) 12 SCC 709, Khatri Hotels Private Limited and another Vs. Union of India and another, (2011) 9 SCC 126, V.K. Nayar VS. Mrs. Usha Puri and others, 2014 SCC OnLine Del 146, Smt. Razia Begum VS.**

Delhi Development Authority and others, 2014 SCC OnLine Del 4628, Venkappa Gurappa Hosur Vs. Kasawwa C/O Rangappa Kulgod, (1997) 10 SCC 66, Union of India and others Vs. West Coast Paper Mills Ltd. and another, AIR 2004 SC 1596, C. Padmawati Naidu and others Vs. Friends Cooperative Housing Society Ltd. and others, (2016) 3 BomCR 236 and Hindustan Lever Mazdoor Sabha Vs. Hindustan Lever Ltd. and another, (1998) 8 SCC 349 and contended that limitation of three years starts when the right to sue first accrues. Once the time starts 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 Article 58 of the Limitation Act and the period is three 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. If the suit is based on multiple causes of action, the period of limitation will begin to run from the date when right to sue first accrues. Successive violation of the right will not give rise to fresh cause and the suit will be beyond limitation. A clear departure from the language of Article 120 of 1908 Act of the Limitation Act has been made in Article 58 of 1963 Act of the Limitation Act. The word “first” has been designedly used between the words “sue” and “accrued”.

[7]. Learned Senior Counsel further relied upon **Anup Singh and others Vs. Smt. Bachni @ Bachan Kaur and another, 1997(1) ILR (P&H) 381, Bandari Pushpamma Vs. Bandari Krishna and others, (2004) 4 ICC 12 (AP), Sanghamitra Jena Vs. The Director of Higher Education, Orissa and others, (2002) 94 CLT 280 (Orissa), Mrs. Kumud Bhargava Vs. Sri Sudhir Bhargava and others, (2015) 1 All LJ 480** and **Saranpal Kaur Anand Vs. Parduman Singh Chandhok and others, 2016 SCC OnLine Del 2434** and submitted that under Section 3 of the Limitation Act, the onerous duty was assigned to the trial Court to see whether the suit was within limitation or not, irrespective of the fact that whether limitation was set up as a ground of defence or not? Section 3 of the Limitation Act is mandatory and casts an onerous duty on the trial Court to dismiss the suit, if the same is instituted after the period of limitation, even if, limitation has not been pleaded in defence. There cannot be any waiver of this legal plea, rather plea can be raised, even in regular second appeal. There cannot be any abandonment of legal plea of the limitation. The limitation of 3 years begins to run from the date when the issue becomes known to the plaintiff. When no date for execution of sale deed was fixed, Article 54 of the Limitation Act would come into play. The limitation for filing a suit for specific performance is three years from the date fixed for performance thereof. If no date is

fixed, then the limitation would start when the plaintiff has noticed that performance was refused.

[8]. Learned Senior Counsel also relied upon **Vishwa Nath Sharma Vs. Shyam Shanker Goela and another, (2007) 10 Supreme Court Cases 595** and contended that contingency in respect of pre-condition for 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 pre-condition for grant of specific performance. There was no impediment on the transfer. Lack of permission cannot act as absolute bar on a decree being passed. It may have effect on the execution if ultimately permission is not granted. The permission from the authority is not a condition precedent for grant of decree for specific performance.

[9]. Learned Senior Counsel further submitted that a refusal of performance of a contract of sale need not to be in writing or expressed in so many words. Refusal can always be inferred from circumstances of the case. It is significant that part two of the clause occurring in column third of Article 54 of the Limitation Act does not speak of the refusal as such but speaks of “when the plaintiff has noticed that performance is refused”. The aforesaid expression i.e. “has noticed that performance is refused” very clearly goes to show that the refusal need not be in so many words and may be gathered from the circumstances of

the case. According to learned counsel for the plaintiff, the plaintiff himself has pleaded cause of action in para No.30 of the plaint and the same is as per requirement of Order 7 Rule 1 CPC, therefore, the cause of action once started w.e.f. 26.07.2007 or from December 2008 will not stop running.

[10]. On the other hand, learned counsel for the respondent argued that the material issues involved in the revision petition are:-

(a) Whether after perusing the plaint as a whole, it discloses any cause of action against the defendant?

(b) Whether for deciding an application under Order 7 Rule 11 CPC, the provisions of Article 54 of the Limitation Act are attracted?

(c) Whether in a suit for specific performance of agreement to sell where possession is delivered, the agreement requires registration under Section 17(1) and Section 49 of the Registration Act read with Section 53-A of the Transfer of Property Act?

[11]. Learned counsel submitted that the suit for specific performance of agreement to sell dated 26.07.2007 has been filed on 08.02.2012. As per para No.5 of the agreement to sell, defendant had to first obtain the requisite permission from the competent authority for executing the sale deed. Subsequent paras including para No.30 of the plaint specifically disclosed the cause of action arising in favour of the plaintiff. Learned counsel further submitted that limitation for filing the suit as per Article 54

of the Limitation Act is two-fold i.e. firstly limitation starts from the date fixed in the agreement, if any and secondly, if no specific time is fixed, from the time when the specific performance is refused by the opposite party. The case of the plaintiff is squarely covered by the second part of the said provision of the Limitation Act as there was no date and time fixed in the agreement for performance and therefore, the limitation would start to run from the refusal to perform by the defendant. As per para No.22 of the plaint, the plaintiff finally came to know on 04.07.2011 about the refusal to perform the agreement by the defendant when he got knowledge that the suit property has been mortgaged. Learned counsel relied upon **Medina Begum Vs. Shiv Murti Prasad Pandey, 2016 AIR (SCW) 3554** in the aforesaid context.

[12]. Learned counsel further submitted that plea of limitation in a suit for specific performance is a mixed question of law and facts and the same cannot be decided at this stage. Learned counsel relied upon **Surjeet Kaur Gill Vs. Adarsh Kaur Gill and another, 2014(2) CCC 095(SC), P.V. Guru Raj Reddy Rep. by GPA Laxmi Narayan Reddy and another Vs. P. Neeradha Reddy and others, 2015(2) RCR (Civil) 43, Bhau Ram Vs. Janak Singh and others, 2012(3) CivCC 636, Civil Revision No.2083 of 2016** titled **Brijeshwar Swaroop and others Vs. Adish Aggarwal and others** decided on 12.09.2017 and **Balasaria Construction (P) Ltd. Vs. Hanuman Seva Trust and others, (2006) 5 Supreme Court Cases 658** and contended

that plaint as a whole has to be read for deciding whether it deserves to be rejected on the ground raised. The issue of limitation is always a mixed question of law and facts. Order 7 Rule 11 CPC is drastic in nature and the powers are conferred on the Court to terminate a civil action and the powers are to be exercised very stringently and rarely. The averments in the plaint have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At this stage, the stand of the defendant in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint *ex facie* do not disclose a cause of action or on a reading thereof, suit appears to be barred under any law, the plaint can be rejected.

[13]. Learned counsel also submitted that para No.30 of the plaint has to be read in conjunction with para No.12 of the plaint where the plaintiff has furnished the following information:-

“12. That in the month of December, 2008, the defendant No.1 approached the plaintiff and requested to hand over the original title documents since the same are required to be verified and filed along with the application for sale permission with HSIDC in favour of the plaintiff. The plaintiff in good faith with bonafide impression and believing on the representation and requests made by the defendant No.1 handed over all the title documents to the defendant No.1 in respect of the suit property.”

[14]. I have considered the arguments raised by learned counsel for the parties.

[15]. According to Order 7 Rule 1 CPC, the plaint shall contain the material particulars and the compliance is mandatory i.e. the plaint shall contain the following particulars:-

(a) the name of the Court in which the suit is brought;

(b) the name, description and place of residence of the plaintiff;

(c) the name, description and place of residence of the defendant, so far as they can be ascertained;

(d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;

(e) the facts constituting the cause of action and when it arose;

(f) the facts showing that the Court has jurisdiction;

(g) the relief which the plaintiff claims;

(h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and

(i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of Court fees, so far as the case admits.

[16]. The reading of the aforesaid clauses would show that cause of action should be specifically pleaded in the plaint. Plaintiff in his own wisdom specifically earmarked para No.30 for cause of action which would show that the cause of action arose

for the first time on 26.07.2007 when the plaintiff and defendant No.1 entered into an agreement to sell. If he ignores the date of entering into agreement to sell, then the cause of action arose for the second time on December 2008 when defendant No.1 on misrepresentation took back the original documents from the plaintiff. This averment is a material averment and if limitation in a suit for specific performance starts running from this date, the same would culminate in December 2008. Plaintiff further pleaded that the cause of action arose on June 2008, January 2009. Even from these dates, the expiry of three years would come prior to 08.02.2012.

[17]. In view of settled position of law, once the 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 plaintiff himself has pleaded accrual of cause of action for the first time on 26.07.2007 and December 2008, no amount of explanation is further required. Even as per ratio laid down in **Vishwa Nath Sharma's case (supra)**, permission from the competent authority is not a condition precedent for grant of decree for specific performance for which limitation has to be computed in terms of Article 54 of the Limitation Act. As per Section 10 of the Specific Relief Act, the meaning of expression "date" has been used in Article 54 of the Limitation Act. The expression "date" is suggestive of a specified date in the calendar and there is no question of finding out any

intention from other circumstances. When a date is fixed, it means that there is a definite date fixed for doing a particular act. Plaintiff himself has pleaded in para No.30 of the plaint the exact date and month in which cause of action accrued for the first time in favour of the plaintiff. There cannot be any disputed interpretation with regard to cause of action specifically pleaded by the plaintiff in para No.30 of the plaint, which in my considered opinion is the offshoot of requirement under Order 7 Rule 11 CPC. Plaintiff himself has earmarked specific paragraphs for pleading cause of action and therefore, date and month in the context of cause of action cannot be the subject matter of any intention to be gathered from other circumstances as it was fixed with definite pleadings for doing a particular act. In Article 54 of the Limitation Act, the word “fixed” in essence means having final or crystallized form or the character is not the subject matter to any change or fluctuation. A view expressed by the Hon’ble Apex Court in **Ahmmadsahab Abdul Milla (dead) by proposed LRs Vs. Bibijan and others, 2009(2) RCR (Civil) 788** can be relied wherein earlier contrary view expressed in **Ramzan Vs. Hussaini, 1990(1) SCC 104** and **Tarlok Singh Vs. Vijay Kumar Sabharwal, 1996(8) SCC 367** was considered and it was held that the word “fixed” in essence means having final or crystallized form or character not subject to change or fluctuation. Therefore, expression “date” used in Article 54 of the Limitation Act definitely is suggestive of a specified date in calendar and the cause of

action pleaded in para No.30 of the plaint has to be treated as a specific para relating to giving specific date of accruing cause of action for the first time. The contention of learned counsel for the respondent that para No.12 of the plaint has to be read in conjunction with para No.30 of the plaint for culling out cause of action, in my considered opinion is contrary to the ratio laid down in **Ahmmadsahab Abdul Milla (dead) by proposed LRs case (supra).**

[18]. Having considered the submissions made by learned counsel for the parties, I am of the view that this revision petition is deserves to be accepted. Impugned order dated 29.09.2015 passed by Civil Judge (Junior Division), Gurgaon is hereby set aside and the plaint is ordered to be rejected.

(RAJ MOHAN SINGH)
JUDGE

08.01.2018

Prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No