

RSA-5856-2017 (O&M)

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

**RSA-5856-2017 (O&M)
Date of decision : 30.08.2018**

M.P. Chatrath

... Appellant

Versus

Punjab National Bank and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Ekta Thakur, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff has not been successful in seeking damages amounting to ₹5 Lacs on account of rejection of quotations dated 10.06.2010 submitted to the Bank for supply of Ultra Violet Lamps used for detecting counterfeit currency and negotiable instruments.

The suit aforementioned was filed on 06.08.2014 claiming damages. On receipt of summons, the respondents-defendants/bank submitted an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint, on the premise, that from the contents of the plaint, the suit, aforementioned, was *ex facie* barred by law of limitation. The application, aforementioned, was allowed. Since allowing of the application under Order 7 Rule 11 of CPC has the trappings of a decree as per Section 2 of C.P.C, remedy of appeal was availed by the appellant-plaintiff, but was not successful. It is, in these circumstances, the present appeal has been filed.

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Ms. Ekta Thakur, learned counsel appearing on behalf of the appellant-plaintiff submitted that the Courts below ought not to have rejected the plaint by entertaining the application under Order 7 Rule 11 of CPC as point of limitation is a mixed question of fact and law. In support of her contentions, laid reliance to the judgment of Hon'ble the Supreme Court in **"Sopan Sukhdeo Sable V/s Assistant Charity Commissioner" 2004 (3) SCC 137; 2006 (1) RCR (Rent) 138**, therefore, the Courts below should have called upon the parties to lead evidence not on all issues, but at least by framing the preliminary issue, thus, the order, under challenge, is without jurisdiction and liable to be set aside.

It was next contended that there is a categoric admission in the plaint that on receipt of the reply to the notice, the suit was filed and therefore, the suit was within a period of limitation.

I have heard learned counsel for the appellant-plaintiff, appraised the paper book as well as case law cited at bar and of the view that there is no force and merit in the submissions of Ms. Thakur, as, for adjudication of application under Order 7 Rule 11 of CPC, only the averments in the plaint, have to be seen. On going through the contents of the plaint, it is evident that the plaintiff had submitted the quotation on 10.06.2010, which was, according to the averments in the plaint, was manipulated. Receipt of the information under Right to Information Act in the year 2012, sending of the legal notice and received in 2014, filing of suit on 06.08.2014, would be immaterial, for, during all this period, limitation expired in the month of June 2013. There was no acknowledgement of date as per the provisions of 18 of the Limitation Act. In my view, it would be a farcical exercise for the Courts below to call upon the parties to lead

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evidence, thus, in my view, application under Order 7 Rule 11 of CPC has rightly been accepted by rejecting the plaint. The order, under challenge, cannot be said to be without jurisdiction.

Keeping in view the aforementioned facts and circumstances, I do not differ with the findings rendered by the Courts below, which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

No ground is made out for interference.

The present regular second appeal is dismissed.

30.08.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**