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

**CR No.3231 of 2018(O&M)
Date of Decision: 22.11.2019**

**Sharan Pal Singh ....Petitioner**

**Versus**

**M/s ARS Construction .....Respondent**

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

Present: Mr. Viren Jain, Advocate and
Mr. Raj Shekhar, Advocate
for the petitioner.

Mr. B.B. Bagga, Advocate
for the respondent.

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***RAJ MOHAN SINGH, J.***

[1]. Petitioner has preferred this revision petition against the order dated 17.04.2018 passed by Civil Judge (Junior Division), Chandigarh, vide which application filed by the defendant/petitioner under Order 7 Rule 11 CPC for rejection of plaint was dismissed.

[2]. Plaintiff/respondent filed a suit for declaration to the effect that the principal loan amount of Rs.76,00,000/- paid through account of the plaintiff with Corporation Bank to the account of the defendant with Punjab and Sind Bank is payable

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by the defendant to the plaintiff. Declaration is sought that the defendant is liable to pay the aforesaid amount with interest @ 24% per annum from 19.10.2012 till the actual date of payment. Further declaration is also sought that the defendant is bound due to his own fault to furnish sufficient security for securing repayment of the said amount. Perpetual mandatory injunction is also prayed to restrain the defendant from creating any charge over the property.

[3]. Pleadings in terms of para Nos.2 and 3 of the plaint are reproduced hereasunder:-

> *"2. That short term, accommodation allowed by the plaintiff to the defendant to the extent of Rs.76.00 lacs to the defendant on 19.10.2012 through RTGS from account of the plaintiff with Corporation Bank, on the oral request of the defendant to plaintiff. The said accommodation was sought by the defendant to facilitate adjustment of overdue component of credit limits of defendant in the books of Punjab and Sind Bank Sector 22, Chandigarh. It was a crystal clear undertaking by defendant that his credit limits are at the official stage of being enhanced immediately. The enhancement of credit limits of the defendant was to be allowed only after adjustment of the overdue component. The defendant promised and bound himself to return the amount of Rs.76.00 lacs given to defendant within a period of 15 days. A copy of the statement of account through which the said amount of*

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*Rs.76.00 lacs was remitted through two separate RTGS entries of Rs.41,00,000.00 on 19.10.2012 and Rs.35,00,000/- again on 19.10.2012, respectively is enclosed and marked as Annexure P-1.*

*3. That the defendant neglected to honour his commitment to pay back the said amount of Rs.76.00 lacs within short period of 15 days. However, the defendant over one or the other pretext, on repeated occasions expressed his inability, because of some problem for enhancement of his limits. The defendant voluntarily agreed to pay the amount through installments and the defendant agreed to pay the monthly interest at the rate of 2% p.m. on outstanding balance of every month cumulatively. Under these circumstances, the plaintiff received from the defendant Rs.35.00 lacs upto 31st March, 2013. An aggregate amount received from the defendant till date against the aforesaid amount of Rs.76.00 lacs plus interest is Rs.35,10,000/-. However, the defendant did not honour the said commitment of repayment of the entire amount of Rs.76.00 lacs. Consequently, the unpaid interest by the defendant also merged with the principal on monthly basis and the claim of plaintiff is computed. A copy of memorandum of account in respect of liability of the defendant is enclosed and marked as Annexure P-2."*

[4]. In para No.10 of the plaint, it was pleaded that appropriate Court fee applicable to the suit stands affixed by the plaintiff, but he has not quantified the amount.

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[5]. Learned counsel for the petitioner submitted that the suit for declaration is barred under proviso to Section 34 and under Section 41(h) of the Specific Relief Act. Prayer for recovery of Rs.76,00,000/- with interest requires payment of *ad valorem* Court fee on the basis of amount sought to be recovered by the plaintiff. Prayer for mandatory injunction is only in the context of restraint order. Learned counsel further stated that as per Section 18 of the Limitation Act, there has to be acknowledgment in writing. There is no writing available in the present case. Learned counsel also stated that the suit would be barred by limitation.

[6]. As against this, learned counsel for the respondent relied upon averments made in the plaint, wherein it has been specifically pleaded that memorandum of account in respect of liability of the defendant was prepared and the same was attached along with the plaint as Annexure P2. By referring to Section 19 of the Limitation Act, learned counsel stated that as per memorandum of account attached collectively as Annexure P5, an amount of Rs.10,000/- was paid in the month of February, 2015 and therefore, a fresh period of limitation shall be computed from the time when payment was made. The effect of part payment under Section 19 of the Limitation Act has to be tested on the basis of interpretation attached to Order 7 Rule 6

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CPC i.e. where a suit is instituted after the expiration of period prescribed by the law of limitation, the plaint shall show the ground upon which the exemption from such law is claimed.

[7]. In my considered view, all these issues shall be decided by the trial Court on the basis of material to be placed by the parties at appropriate stage. Plea of limitation is found to be a mixed question of law and facts in the present case and the same shall be adverted to by the trial Court on the basis of evidence to be led by the parties. So far as, non-payment of *ad valorem* Court fee is concerned, in case, the suit is found to be insufficiently stamped, the trial Court would be at liberty to pass a contingent decree. The limitation of three years from the date of loan i.e. 19.10.2012 and the time upto which the same was payable, have to be appreciated by the trial Court with reference to Sections 18, 19 and 20 of the Limitation Act and the effect of part payment under Section 19 of the Limitation Act shall also be answered by the trial Court on the basis of material to be produced by the parties. All the aforesaid issues are dependent upon evidence of the parties and cannot be appreciated in isolation at this stage. If the clever drafting has created some illusion of a cause of action, the same should be nipped in the bud at the first hearing by examining the party under Order 10 CPC. In any case, under Order 7 Rule 11 CPC, the plaint cannot

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be rejected at this stage.

[8]. In view of above, this revision petition is dismissed.

22.11.2019 **(RAJ MOHAN SINGH)**
*Prince* **JUDGE**

**Whether reasoned/speaking** **Yes/No**

**Whether reportable** **Yes/No**

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