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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
10/11/2019 12:43
I attest to the accuracy and
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CR-3466-2019 (O/M)
Date of decision : 24.5.2019

State Bank of India and another Petitioner (s)

Versus

ALP Nishikawa Company Limited and others Respondent (s)

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. A.K. Ahuja, Advocate,
for petitioners.

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KULDIP SINGH, J. (ORAL)

Impugned in present revision is order dated 2.3.2019 (Annexure-P-9), passed by learned Civil Judge (Junior Division), Dera Bassi, District SAS Nagar, vide which application filed by petitioners defendants under Rule VII Order 11 CPC, 1908, was dismissed.

I have heard learned counsel for petitioners and have also carefully gone through file.

Respondent-plaintiff company has filed a suit for recovery of Rs. 1,47,20,765/- and also claiming a sum of Rs. 3,00,00,000/- on account of loss of reputation and image of plaintiff-company. In this case, suit was filed on 17.3.2015, issues were framed on 6.5.2016 and application was filed in November, 2017, for rejection of plaint on the ground that suit is time barred, when respondent-plaintiff company filed affidavit of witnesses in examination in chief.

The learned counsel for petitioners contends that in the suit itself, it is stated that cause of action arose in the year 2004 and 2005. Respondent-plaintiff company pursued his remedy before National Consumer Disputes Redressal Commission, New Delhi, which dismissed

same on 12.9.2014 by holding that plaintiff company is not a consumer and it can approach civil court. Plaintiff-company wants this period to be excluded while computing limitation.

The learned counsel for petitioners contends that it is preliminary issue and suit is patently time barred. However, trial Court, after discussing the laws on the point, came to conclusion that since it is mixed question of fact and law, therefore, it is to be decided with main case. Undisputedly, application under Order VII Rule 11 CPC, 1908, can be filed at any stage. However, in this case, there is inordinate delay in filing application for rejection of plaint which is ordered to be considered while deciding main case. Now, case is fixed for evidence of plaintiff-company. Case is more than four years old case. The evidence is required to be led as to whether period during which matter remained pending before National Consumer Disputes Redressal Commission, New Delhi, is to be excluded while computing limitation or not? Since case is already fixed for evidence of plaintiff-company, in order to properly appreciate the facts, interest of justice requires that issue regarding limitation should be decided with main case. There is no ground to reject the plaint at this stage. Therefore, revision is dismissed.

(KULDIP SINGH)
JUDGE

24.5.2019
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No