

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

RSA-1488-2015(O&M)

Date of decision:-17.10.2019

Rajnish Kumar Mutneja

...Appellant

Versus

The Mohali Club

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vivek Chauhan, Advocate
for the appellant.

None for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Rajnish Kumar Mutneja, aged 45 years son of Harkirishan Lal, a resident of Jalalabad West, District Ferozepur had brought a suit against defendant - The Mohali Club (hereinafter referred to as 'Club') seeking a declaration that order dated 16.9.2008 passed by defendant - club to cancel the membership of the plaintiff is illegal, null and void and against the provision of law and natural justice, in that way is ineffective qua rights of the plaintiff; in addition to that seeking a decree for mandatory injunction directing the defendant to restore the membership of the plaintiff from 15.9.2008 onwards.

As per the version of the plaintiff, he is member of

defendant – club for last several years having acquired life membership bearing No.P-127, after paying a sum of Rs.20,000/-; he visited the club in the month of November, 2008 and was asked to clear his outstanding dues of Rs.6,000/-, failing which, his membership would be cancelled; the plaintiff paid the amount vide receipt No.16367 dated Nil; he again went to the club in February, 2009 and a bill of approximately Rs.700/- was raised against him for the services enjoyed by him; at request of the plaintiff the said amount was debited in his account; when the plaintiff went to the club in the month of October, 2009, he was surprised to find that his membership has been cancelled on account of non-payment of the previous dues/bills; he had requested the defendant to restore his membership and withdraw the impugned order dated 16.9.2008 cancelling his membership but to no effect. Feeling aggrieved, the plaintiff brought the suit in the Civil Court.

On getting notice, the defendant appeared and filed a written statement contesting the suit contending that the plaintiff lacked locus standi to file the suit. On merits, the defendant controverted the assertions in the plaint contending that the plaintiff had not paid club bills regularly and on 5.8.2006, his outstanding dues were Rs.2,252/- and in that regard a termination notice was issued to him; on 29.6.2007, his outstanding dues were Rs.2,355/- for which his credit facility was withdrawn, thereafter on 10.8.2007, his

dues were Rs.2,655/- for which a notice was issued to him; on 15.9.2007, the outstanding dues were Rs.2,805/- and for that reason, his credit facility was withdrawn; on 25.1.2008, his outstanding dues were Rs.3,555/- and his credit facility was withdrawn; similarly on 25.4.2008, his outstanding dues were Rs.2,405/- for which his credit facility was again withdrawn and on 25.7.2008 his outstanding dues were Rs.5,897/- for which a termination notice was issued to him; on 25.8.2008 his outstanding dues were Rs.5,303/- for which a notice of termination of his membership was issued to him informing that in case of non-payment of dues within 15 days, the membership would be cancelled but to no effect, in that way the plaintiff is a habitual defaulter and did not pay his outstanding bills regularly in time, as per rules and regulations of the defendant club; the membership of the plaintiff was cancelled on 17.9.2008 for non-payment of dues; that the membership of plaintiff was cancelled as per rules of the club after following due procedure; that the plaintiff was provided a statement of ledger account from April 2008 to 17.9.2008 showing that plaintiff never intended to make payment of outstanding bills after receiving the notices from the defendant. Refuting the other assertions in the plaint, the defendant prayed for dismissal of the suit.

The plaintiff had filed replication to the written statement controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP.
2. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? OPP.
3. Whether the plaintiff has no locus standi to file the present suit? OPD.
4. Whether the suit of the plaintiff is liable to be dismissed on the ground of delay and laches? OPD.
5. Whether the suit of the plaintiff is barred by limitation? OPD.
6. Relief.

In order to prove his case, the plaintiff got his statement recorded as PW1. On the other hand, the defendant had examined Capt. M.K. Sharma as DW1.

After hearing learned counsel for the parties, the trial Court decided issues No.1 to 3 against the plaintiff, issues No.4 and 5 in favour of the defendant. Resultantly, suit of the plaintiff was dismissed. This was so done vide judgment and decree dated 21.2.2014.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, SAS Nagar, Mohali, which was assigned to Additional District Judge,

SAS Nagar(Mohali), who vide judgment and decree dated 22.9.2014 dismissed the same affirming the judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, resultantly the impugned judgments and decrees passed by the Courts below be set aside and suit of the plaintiff be decreed.

Notice of the appeal was issued to respondent. However, there was no representation on behalf of respondent/defendant.

I have heard learned counsel for the appellant besides going through the records and I find that there is no merit in the appeal.

The plaintiff is basically aggrieved by order dated 16.9.2008 passed by defendant – club cancelling his membership of the club, whereas the suit was filed by him on 1.6.2013 i.e. after more than 4 years and 8 months. Under Article 58 of the Limitation Act, 1963, limitation to obtain a declaration is three years from the date when the right to sue first accrues. The suit having been filed beyond a period of three years is clearly time barred.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and

application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

It may be mentioned here that the plaintiff had approached District Consumer Forum, Mohali for redressal of his grievances there but was unsuccessful. He had gone to State Commission also but could not succeed. He wants the period spent by him in prosecuting the matter before District Consumer Forum, Mohali and State Commission to be excluded from the period of limitation under Section 14 of the Limitation act but the First Appellate Court had considered that aspect in detail coming the conclusion that no ground was made out to exclude that period. The relevant discussion contained in paras No.13 and 14 of the judgment passed by the First Appellate Court, Mohali is being reproduced as under:

*13. Though the plaintiff has pleaded regarding the proceedings before District Consumer Forum, Mohali and State Commission but has neither prayed for the benefit of Section 14 of the Act to be conferred upon him nor has pleaded that the proceedings were initiated in good faith Hon'ble Punjab & Haryana High Court in case titled **Krishan Kumar Vs. Sanjay Kumar & another CR No.376 of 2011** decided on 1st November 2012 observed that “to avail of benefit of section 14 of*

the Act the earlier civil proceedings should have been prosecuted in good faith in a court. In my opinion, District Forum under the Consumer Protection Act cannot be equated with the court as used in Section 14 of the Act. Consequently, on account of filing of a complaint in the District Forum, benefit of section 14 is not available to the plaintiff". The membership of plaintiff in this case was cancelled in year 2009 and the suit was filed in 2013, which is patently time barred as per article 58 of the Act.

14. *The judgments the learned counsel for plaintiff has relied upon reported as M/s Victor Industries & Other Vs. Banarsi Lal 2007(1) CCC 370 P&H, in which the law regarding resjudicata has been discussed; Kerala State Civil Supplies Corporation Vs. M.G.M. Transport 2005(2) RCR Civil 171 Kerala, which has discussed the conditions for applicability of Section 14 of the Limitation Act and Prem Chand Vs. HSIBC Limited 2006(2) RCR Civil P&H 573, in which applicability of Section 14 of the Act in arbitration proceedings has been laid down, are, with due respect to the same, not of much assistance to the facts and circumstances of the present case.*

I find myself in agreement with the First Appellate Court in that regard. No reason is there to exclude such period from the period of limitation granting benefit of Section 14 of the Limitation Act to the plaintiff. The suit was clearly barred by time and was rightly dismissed by the trial Court. Even otherwise, on merits also the plaintiff could not point out any illegality or infirmity with the impugned order cancelling his membership, as it comes out that he had not been paying arrears of his bills regularly and was a chronic defaulter. He failed to regularize the payments despite being issued several notices and given opportunities. Therefore, in terms of the rules of Club his membership was cancelled.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

The appeal stands dismissed accordingly.

17.10.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No