

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

RSA No.5442 of 2016(O&M)

Date of decision: 29.5.2019

Mahadev

.....Appellant

VERSUS

Chattar Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sumit Sangwan, Advocate for the appellant.

Mr. Amit Arora, Advocate for the respondent.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against judgment and decree dated 07.09.2016 passed by the District Judge, Bhiwani whereby appeal against the judgment and decree dated 29.11.2014 passed by the trial Court, decreeing suit of the appellant/plaintiff for recovery, was accepted on the sole ground that the suit is barred by limitation.

Counsel for the appellant would argue that as per case set up by the appellant, the respondent/defendant borrowed a sum of Rs.24000/- to be paid with interest at the rate of 2% per month on expiry of one year and in this regard, a writing was prepared in the *bahi* signed by the respondent/defendant in Hindi. It is argued that the suit was filed on 16.07.2012 as limitation to file the suit expired on 19.06.2012 when the Courts were closed on account of summer vacations and no civil work was conducted. It is argued that the appellant raised a specific plea in the

plaint that the period from 19.06.2012 to 16.07.2012 is to be excluded as the Courts were closed from 15.06.2012 to 15.07.2012. According to counsel, the trial Court framed issue No.3 on the question of limitation and the same was decided against the respondent/defendant with the findings that the said issue was not pressed during the course of hearing. It is further argued that the Court in appeal without adverting to contention of the appellant that Courts were closed from 15.06.2012 to 15.07.2012 and the relevant provision of Limitation Act, 1963 (in short 'the Act') has decided the question of limitation against the appellant and on the basis thereof, the judgment and decree passed by the trial Court were set aside. It is vehemently argued that findings of the first Appellate Court on the question of limitation may be set aside and the matter be remitted to first Appellate Court for decision of the appeal on merits.

Counsel representing the respondent has not disputed the factual controversy that the Courts were closed for civil work from 16.06.2012 to 15.07.2012 and the suit was instituted on the first opening day i.e. 16.07.2012. However, it is contended that even if the Courts were not doing regular civil work during the aforesaid period, there was no bar for the appellant/plaintiff to institute the suit during vacations well before expiry of period of three years from the alleged accrual of cause of action.

I have heard counsel for the parties, perused the paper-book and records.

The trial Court framed issue No.3 in respect of limitation but onus thereof has been wrongly placed upon the respondent/defendant. As per the settled position in law, it is incumbent upon the plaintiff to prove that he has filed the suit within the prescribed period of limitation. Perusal

of the plaint particularly para 7 thereof makes it evident that a specific plea was raised by the appellant that the Courts were closed from 15.06.2012 to 15.07.2012. As per case set up by the appellant, last date for filing the suit was 19.06.2012 but since the Courts were closed at that time, he filed the suit on the first opening day. As has been rightly argued by counsel for the appellant, the Court in appeal neither adverted to the averments raised in para 7 nor examined Section 4 of the Act that says ‘Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens’. In this view of the matter, findings of the Appellate Court on the issue of limitation cannot be allowed to sustain and set aside. The matter is remitted to the first Appellate Court for decision of the appeal afresh, in accordance with law.

In view of what has been discussed hereinbefore, the appeal is allowed in the aforesaid terms. The parties through their counsel are directed to appear before the first Appellate Court on 24.07.2019. The Appellate Court shall dispose of the appeal within three months of the parties putting in appearance.

MAY 29, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no