

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

Date of decision: 06.03.2019

1. RSA No.894 of 2015 (O&M)

Naunihal Singh Chatha and others

..... Appellants

Versus

Kuldeep Kaur and another

..... Respondents

2. RSA No.4601 of 2017 (O&M)

Naunihal Singh and others

..... Appellants

Versus

Bal Bahadur Singh and another

..... Respondents

3. RSA No.4613 of 2017 (O&M)

Naunihal Singh Chatha and others

..... Appellants

Versus

Mangat Ram and another

..... Respondents

4. RSA No.5527 of 2018 (O&M)

Darshan Lal

..... Appellant

Versus

Naunihal Singh Chatha and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S. Athwal, Advocate
for the appellants (in RSA-894-2015, RSA-4601 & 4613-2017)
for the respondents (in RSA-5527-2018).

Mr. Sunil Garg, Advocate
for the appellant (in RSA-5527-2018).

Mr. R.S. Bajaj, Advocate
for respondent No.1 (in RSA-894-2015).

Mr. Abhinav Gupta, Advocate
for respondent No.1 (RSA-4613-2017).

ANIL KSHETARPAL, J. (ORAL)

CM-2648-C-2015 in RSA-894-2015

Prayer in the application is for permission to file the appeal through Harpreet Kaur-wife and two minor sons of Jaipal Singh.

Application is allowed. Necessary permission is granted.

CM-12095-C-2017 in RSA-4601-2017

CM-12133-C-2017 in RSA-4613-2017

Applications are allowed and the delay in filing the appeals is condoned.

Main Cases

Vide this judgment, four appeals bearing RSA No.894 of 2015, RSA No.4601 of 2017, RSA No.4613 of 2017 and RSA No.5527 of 2018 shall stand disposed of as common question needs determination. Counsel for the parties are also agreed that all these appeals can be conveniently disposed of by a common judgment.

In the considered view of this Court, the following substantial question of law arise for consideration:-

“Whether in absence of 'the date fixed' for performance of the agreement to sell in its literal meaning whether period of limitation would begin to run from first part or second part of the Article 54 of Schedule to the Limitation Act, 1963?”

The agreement to sell in all these cases are on different dates, however, small plots of various sizes were agreed to be sold. The entire sale consideration was paid. The possession was delivered. The building has

been constructed. As per the agreement to sell, the sale deed was to be executed within 30 days from the day when Urban Land (Ceiling and Regulation) Act, 1976 is repealed. The aforesaid Act was repealed by Urban Land (Ceiling and Regulation) Repeal Act, 1999 w.e.f. 30.05.2000. The plaintiff-respondent in RSA-894-2015, RSA-4601-2017 and RSA-4613-2017 and the plaintiff-appellant in RSA-5527-2018 did not get the sale deed registered within the aforesaid 30 days from the date of abolition of the Act of 1999. Hence, the question which needs consideration is what is the meaning of the word 'the date fixed' in the Article 54 of the Limitation Act.

Fortunately, a larger Bench of the Hon'ble Supreme Court has deliberated upon the aforesaid aspect and have interpreted the word 'the date fixed'. The Hon'ble Supreme Court after referring to Advanced Law Lexicon has held as under:-

“5. According to Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edition 2005, the word 'date' means as follows:

"Date. (As a noun) The point of time at which a transaction or event takes place; time given or specified; time in some way ascertained and fixed; in a deed, that part of the deed or writing which expresses the day of the month and year in which it was made, (2 Bl. Commn. 304; Tomlin). In **Bement v. Trenton Locomotive, etc., Mfg. Co.**, 32 NLJ 513 (515), it is said : 'The primary signification of the word date, is not time in the abstract, nor time taken absolutely but, as its derivation plainly indicates, time given or specified time in some way ascertained and fixed; this is the sense in which the word is commonly used. When we speak of the date of a deed, we do not mean the time when it was actually executed but the time of its execution, as given or stated in the deed itself.

"Where a deed bears no date, or an impossible date, and in the deed reference is made to the 'date', that word must be construed

`delivery'; but if the deed bears a sensible date, the word 'date', occurring in the deed, means the day of the date, and not that of the delivery".

"Date", though sometimes used as the shortened form of "day of the date", is not its synonym; but mean the particular time on which an instrument is given, executed, or delivered.

"The word 'date' is much more commonly descriptive of a day than of any smaller division of time".

"Date" means day, so that where a cover note providing for temporary insurance of a motor car expires "15 days after date of commencement" it runs for the full 15 days after the day on which it was to commence".

6. 'Fixed' in essence means having final or crystallized form or character not subject to change or fluctuation.

7. The inevitable conclusion is that the expression 'date fixed for the performance' is a crystallized notion. This is clear from the fact that the second part "time from which period begins to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on `when the plaintiff has notice that performance is refused'. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression 'date' used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits."

Learned counsel appearing for the owners-defendants has made a sincere attempt to persuade this Court to take a view that 'the date fixed' means 30 days from the date the Act was abolished. He submits that since

the sale deeds were not executed within the aforesaid time, then on 30th day the period of limitation began to run for filing the suit. He has submitted that the date as has been noticed by the Hon'ble Supreme Court in Para 5 means the point of time at which a transaction or event takes place, time given or specified, time in some way ascertained or fixed. No doubt, as far as the meaning assigned to the word 'date' is with reference to Para 5, however, here in the present case, first part of Article 54 uses 3 words simultaneously i.e. 'the date fixed' not the 'date' only. That is exactly what the Hon'ble Supreme Court in Paras 6 and 7 has explained and pointed out that 'fixed' in essence means having final or crystalized form or character not subject to change or fluctuation. In the present case, the period fixed was subject to happening of an event and the date was fixed contingent upon that event happening. Thus, first part of the Article 54 would not apply. It is not in dispute that in each of the case, the plaintiff before filing the suit served a notice on the defendants-owners to come forward and execute the sale deed after 3 years of the abolition of the Act but the defendants did not come forward. The plaintiffs have pleaded that cause of action accrued to them as the defendants-owners in spite of service of notice did not come forward to execute the sale deed and refusal has been taken for the reasonable time from the date of service of notice. Once the case of the plaintiffs does not fall within first part of Article 54, then obviously, it would fall within the second part of Article 54 in which case, the period of limitation begins to run from the date performance is refused. It is not in dispute that the suit filed by each of the plaintiff is within limitation for such refusal.

Accordingly, RSA No.894 of 2015, RSA No.4601 of 2017 and RSA No.4613 of 2017 are dismissed whereas RSA No.5527 of 2018 is allowed.

The pending miscellaneous application, if any in all these appeals, shall stand disposed of in view of the above-said judgment.

06.03.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No