

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

Sr. No.203

**Civil Revision No.1445 of 2021
Date of Decision : August 24, 2021**

M/s Unissi (India) Pvt. Ltd.

...Petitioner

Versus

Postgraduate Institute of Medical Education & Research and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Kamal Sehgal, Advocate, for the petitioner.

Ms. Madhu Dayal, Advocate with
Mr. Chetan Dayal, Advocate, for respondent No.1.

SUDHIR MITTAL, J. (ORAL)

The respondent No.1 has filed a suit for recovery of Rs.11,48,273.80 paisa along with interest @ 10% pa. The plaint is dated 07.03.2019, but the suit was instituted on 13.03.2019. In para 4 of the plaint, it has been averred that inadvertently a cheque dated 08.07.2014 was issued in favour of the defendants although they were not entitled to be paid the said amount. In para 8, it has been mentioned that the matter came to light when audit was carried out recently.

The defendant No.1-petitioner filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the suit is barred by limitation. In the application, it has been stated that the cheque was admittedly issued on 08.07.2014 and the suit has been filed almost five

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years after the date of cheque. The same should have been filed within three years starting 31.03.2014 as the cheque dated 08.07.2014 was issued in compliance with judgment dated 31.03.2014 passed by the learned District Judge, Chandigarh. Consequently, the same was barred by the law of limitation.

Vide order dated 10.02.2021, the aforementioned application under Order 7 Rule 11 CPC has been dismissed on the ground that the plaint cannot be rejected as question of limitation is a mixed question of law and fact.

Learned counsel for the petitioner has submitted that for decision of an application under Order 7 Rule 11 CPC only the plaint has to be seen. Reading of the entire plaint reveals that specific date on which cause of action arose has not been mentioned i.e. the date on which the plaintiff-respondent No.1 acquired knowledge of cheque dated 08.07.2014 having been issued wrongly. The statement that knowledge was acquired recently when the audit was conducted is evasive and is a clever piece of drafting. Accounts of the PGIMER, Chandigarh are audited annually and thus, the statement that knowledge was acquired only in the year 2019 is patently false. Period of limitation for filing a suit is three years and thus, the trial Court was in error in rejecting the application. Reliance has been placed upon *Raghwendra Sharan Singh vs. Ram Prasanna Singh (Dead) by L.Rs.*, AIR 2019 SC 1430, *Madanuri Sri Rama Chandra Murthy vs. Syed Jalal*, AIR 2017 SC 2653 and *Ram Prakash Gupta vs. Rajiv Kumar Gupta and others*, (2007) 10 SCC 59.

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Learned counsel for plaintiff-respondent No.1 submits that the plaintiff is not required to aver the precise date on which cause of action arose. A perusal of the plaint shows that knowledge was acquired of the excess payment only when audit was conducted in the year 2019 and thus, the suit is not barred by limitation. The defendant-petitioner is at liberty to establish otherwise by leading evidence and if he succeeds, the suit will be dismissed as being barred by limitation. At this stage, the trial Court was justified in ordering that the question of limitation is a mixed question of law and fact and the plaint can't be rejected on examination of the contents thereof.

The facts are not in dispute this case. Plaintiff-respondent No.1 has averred that cheque dated 08.07.2014 was issued by mistake and this mistake came to light recently when the audit was conducted. From bare perusal of the plaint, it cannot be said that the suit is barred by the law of limitation because cause of action did not arise on the date the cheque was issued. Had the plaintiff-respondent No.1 realized its mistake at the time of issuance of the cheque, the same would never have been issued. Learned counsel for the petitioner is correct in contending that while examining an application under Order 7 Rule 11 CPC only the contents of the plaint have to be seen. So examined, the plaint does not reveal that cause of action arose in the year 2014 and thus, the trial Court was justified in rejecting the application on the ground that limitation is a mixed question of law and fact. The defendant-petitioner can lead evidence and get the suit dismissed on the ground of limitation.

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The judgments relied upon by counsel for the petitioner are distinguishable. In ***Raghwendra Sharan Singh (supra)***, a gift deed dated 06.03.1981 was challenged by way of a suit filed in the year 2013. Under the circumstances, the Supreme Court held the suit to be barred by limitation. In ***Madanuri Sri Rama Chandra Murthy (supra)***, the respondent before the Supreme Court filed a suit challenging sale deed dated 12.01.2013 on the ground that the land, subject matter thereof had been declared to be wakf property vide notification in the Official Gazette dated 28.06.1962. The defendants sought rejection of the plaint and the Wakf Tribunal allowed the same. The order was, however, reversed by the High Court in revision. The order of the High Court was set aside by the Supreme Court. It was held that the plaint did not reveal cause of action as the notification dated 28.06.1962 did not include the suit property. This is not the case here and the judgment is distinguishable on facts. In ***Ram Prakash Gupta (supra)***, the appellant before the Supreme Court was the plaintiff who filed a suit dated 07.02.1990 for a declaration that he was exclusive and absolute owner of the suit property and that decrees dated 05.02.1976 and 19.01.1976 were illegal and not binding upon his rights. A decree for possession of second floor of the said property was also sought. Issues were framed, issue No.1 being regarding limitation. The affidavit in examination-in-chief of the plaintiff was filed and cross-examination was closed. Thereafter, application under Order 7 Rule 11 CPC was filed for rejection of the plaint on the ground that the suit was barred by limitation. The trial Court allowed the application and rejected the plaint. Appeal against the order failed. The Supreme Court set aside the orders passed by

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the trial Court as well as the High Court on the ground that necessary averments had been made in the plaint regarding when the plaintiff acquired knowledge of the judgments and decrees under challenge. Thus, the Courts below were not justified in rejecting the plaint. This judgment is on converse proposition of law and does not help the petitioner in any manner.

In view of the above reasons, the revision petition has no merit and is dismissed.

August 24, 2021
Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes