

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

115

CR No.1555 of 2021 (O&M)
DATE OF DECISION : 24th AUGUST, 2021

Vikas WSP Ltd.

.... Petitioner

Versus

M/s O.P. Cotton Mill and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court
=====

Present : Mr. Vijay Sangwan, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Article 227 of the Constitution of India praying for setting aside the impugned order dated 17.03.2021 (Annexure P-4) passed by the Additional Civil Judge (Senior Division), Charkhi Dadri, vide which the application filed by the petitioner under Order 7 Rule 11 CPC has been dismissed.

A perusal of the record shows that the petitioner filed an application under Order 7 Rule 11 CPC for rejection of the plaint claiming therein that the suit filed by the plaintiff was time barred. The said application has been rejected by the Court below; by observing that the limitation is a mixed question of law and facts, therefore, the same cannot be a ground for rejection of a plaint by exercising powers under Order 7 Rule 11 CPC. It is against this order that the present petition has been filed.

It is well settled by now that for the purpose of consideration of an application under Order 7 Rule 11 CPC, the uncontroverted pleadings, as taken in the plaint are to be read by the Court. Any alleged defence of the defendant or dispute regarding facts is not even to be taken into consideration. So far as the present case is concerned, the plaintiff has taken a specific plea that the defendant had acknowledged the liability and thereafter the cause of action arose after expiry of the period of notice dated 01.03.2018. Therefore, it is clear that the plaint filed by the plaintiff does give an explanation for the suit being within the limitation. Whether the plea of the plaintiff qua limitation is correct or incorrect, sustainable or non-sustainable, would be an aspect which shall have to be considered and decided by the trial Court after leading evidence on the same by the parties. Therefore, the Court below has not committed any illegality or irregularity in dismissing the application on the ground that the limitation is a mixed question of law and facts. Read as it is, the plaint in the present case cannot be rejected in exercise of powers under Order 7 Rule 11 CPC.

Hence, finding no merit in the present petition, the same is dismissed.

24th AUGUST, 2021
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(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>