IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR-2259-2022
Reserved on 09.08.2022
Pronounced on: 23.08.2022

Bhim Sen and another .....Petitioners

Versus

Deep Shikha and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Mulwani, Advocate
for the petitioners.

Mr. Akshay Jindal, Advocate with
Mr. Sama Ahluwalia, Advocate
for respondents No.1 to 5.

Mr. Vikas Jain, Advocate
for respondents No.6, 13 to 16 and 18.

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MANJARI NEHRU KAUL, J.

The instant civil revision has been filed under Article 227 of the Constitution of India for setting aside of the order dated 19.12.2019 (Annexure P-8) passed by the learned Trial Court vide which an application filed by the petitioners/defendants No.6 and 7 under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter called as 'the code') was dismissed.

Learned senior counsel appearing for the petitioners submits that the impugned order suffers from grave illegality and is contrary to the settled principles of law pertaining to Order 7 Rule 11 as well as Order 2 Rule 2 of the Code. It has been submitted that the Trial Court failed to appreciate that the suit in question was barred under Order 2 Rule 2 of the Code as respondents No.1 to 5/plaintiffs had earlier also filed a suit for permanent injunction on 03.09.2014 (Annexure P-2), against the petitioners/defendants No.6 and 7, though no relief of specific performance of agreement to sell dated 15.05.2011 was prayed for therein. Leaned senior counsel has invited the attention of this Court to para 22 of Annexure P-2 i.e. the plaint in the earlier suit, and submitted that a perusal of the same makes it evident that since the seller as alleged therein, refused to abide by the terms and conditions of the agreement to sell dated 08.10.2010, the cause of action to file a suit for specific performance of contract if any had accrued in August, 2014 itself, however, respondents No.1 to 5/plaintiffs for reasons best known, still chose to file a suit only for permanent injunction. Hence, the provisions of Order 2 Rule 2 of the Code would be attracted and the subsequent suit filed for specific performance by respondents No.1 to 5 would be not maintainable being barred as it was abundantly clear, in the above facts and circumstances, that respondents No.1 to 5/plaintiffs had relinquished their claim for specific performance. Learned senior counsel has vehemently further urged that since no permission had been obtained to institute the instant suit for specific performance either at the time of filing the suit for permanent injunction or at the stage of its withdrawal by the plaintiffs/respondents, the Court below should have rejected the plaint (Annexure P-3) at the very threshold. However, the Court below erred in passing the impugned order and not appreciating the aforementioned fact. Learned senior counsel for the petitioners also submitted that the suit in question had been instituted much beyond the period of limitation as the period prescribed for filing a suit for specific performance under Article 54 of the Limitation Act, 1963 was three years from the date fixed for specific performance and in case no such date was fixed, then from the date on which either of the parties got notice of the performance being refused by the other. He submitted that as per clause 4, the last date fixed for execution of sale deed was 'on or before 05.04.2011'. However, the present suit for specific performance of the agreement to sell had been filed only on 18.04.2017 i.e. after a lapse of six years. Therefore, the plaint was liable to be rejected on the ground of it being barred by limitation. It was lastly submitted that the jurisdiction of the Civil Court to try the suit in question was barred as the disputes relating to directorship of the company could only be adjudicated upon and decided by the National Company Law Tribunal (NCLT). Learned senior counsel thus prayed for setting aside of the impugned order dated 19.12.2019 (Annexure P-8) and for rejection of the plaint (Annexure P-3). In support of his submissions, learned senior counsel placed reliance upon ***Virgo Industries (Eng.) Private Limited Vs. Venturetech Solutions Private Limited : (2013) 1 Supreme Court Cases 625; Civil Appeal No.1055 of 2019 titled as 'Pramod Kumar and another Vs. Zalak Singh and others' decided on 10.05.2019; RSA No.486 of 2000 titled as 'Harbhajan Singh and another Vs. Hazur Singh and another' decided on 22.11.2018; Fatehji and Company and another Vs. L.M. Nagpal and others : 2015(8) SCC 390*** and ***Civil Appeal Nos.1965-1966 of 2014 titled as 'Shashi Prakash Khemka (dead) through LRs and another Vs. NEPC Micon (now called NEPC India Ltd.) and others' decided on 08.01.2019***.

Leaned counsel appearing for respondents No.6, 13 to 16 and 18 while supporting the case of the petitioners/defendants No.6 and 7 submitted that respondents No.1 to 5/plaintiffs had due knowledge about the cancellation of the agreement to sell dated 08.10.2010 as subsequent to the cancellation, respondents No.1 to 5/plaintiffs themselves along with defendants No.2 to 7 had jointly sold plot No.98 measuring 2 acres along with the entire share holdings of defendant No.1 company to defendants No.10 to 13 and defendant No.15 vide agreement to sell dated 05.05.2022. Learned counsel also submitted that respondents No.1 to 5/plaintiffs had executed a full and final agreement dated 30.06.2011 qua the aforesaid sale. Therefore, respondents No.1 to 5/plaintiffs should have filed the suit for specific performance at the first instance along with the suit for permanent injunction filed by them on 03.09.2014. It was thus prayed that the plaint being barred under Order 2 Rule 2 of the Code and in view of Article 54 of the Limitation Act, 1963 was liable to be rejected.

Learned counsel appearing for respondents No.1 to 5 while opposing the submissions of the learned counsel opposite has referred to the provisions of Order 7 Rule 11(d) of the Code and vehemently argued that for deciding an application for rejection of plaint under Order 7 Rule 11 of the Code on the ground of it being barred by any law, only the averments made in the plaint have to be seen. He has vehemently argued that whether or not the instant suit is barred under Order 2 Rule 2 of the Code is a question which requires a perusal of the plaint in the previously instituted suit. He further submits that contents of the plaint in previously instituted suit can only be scrutinized after the record pertaining to the earlier suit is tendered into evidence by either of the parties and hence the question of maintainability of the suit in question cannot be decided at this stage. Learned counsel thus submits that since the issue of limitation is a mixed question of law and facts, it cannot be decided in an application under Order 7 Rule 11 of the Code. Learned counsel has further submitted that in the written statement filed by defendants No.1, 10 and 13 on 10.10.2016, there were pleadings qua the agreement to sell dated 15.05.2011 allegedly executed by plaintiff No.5-Subhash Chand and one receipt allegedly executed by Prem Bansal. Learned counsel has vehemently contended that since it was the case of respondents No.1 to 5/plaintiffs that these documents were a result of fraud and forgery, therefore, it necessitated the filing of the second suit for specific performance and declaration that the above two documents were not binding on the rights of respondents No.1 to 5/plaintiffs. It has been submitted that in the aforementioned facts and circumstances, it is amply clear that the cause of action for filing suit for specific performance had not arisen in favour of respondents No.1 to 5/plaintiffs when the previous suit i.e. suit for permanent injunction was filed, as neither the sale consideration was refunded by the defendants nor transfer permission was obtained by the defendants for execution of sale deed in favour of respondents No.1 to 5/plaintiffs. He has further vehemently argued that the judgment of the Hon'ble Supreme Court in ***Virgo Industries's case (supra)*** was clearly distinguishable on facts as in para 13 of the aforementioned judgment, the Apex Court noticed the facts of the case whereby in the suit for permanent injunction, plaintiff therein, had made categoric averments that the advance amount paid by the plaintiff was returned by the defendant by way of a cheque. A specific averment that the defendant was trying to cancel the agreement to sell had also been made therein. Learned counsel lastly submitted that the impugned order had been passed on 19.12.2019 and the instant revision petition had been filed after a huge delay of two and a half years on 25.05.2022. He submitted that the explanation given for the delay in the filing of the instant revision petition on the face of it was vague. In support of his submissions, learned counsel has relied upon ***Anil Kumar and others Vs. Gulab Singh and others : 2020(2) RCR (Civil) 134; Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and others : 2021(3) RCR (Civil) 768 and M/s Virgo Industries (Eng.) P. Ltd. Vs. M/s Venturtech Solutions P. Ltd. : 2012(4) RCR (Civil) 372.***

I have heard learned counsel for the parties and perused the relevant material on record.

Respondents No.1 to 5/plaintiffs have filed the suit in question for seeking the following reliefs:-

(i) Suit for a decree for possession by specific performance of the agreement to sell dated 08.10.2010 executed by defendants No.1 to 7 in favour of the plaintiffs in respect of Industrial Plot No.98 (measuring 2 acres), Industrial Area, Phase-1, Panchkula, directing defendants No.1 to 7 and 10 to 15 to execute and get the sale deed registered in respect of Industrial Plot No.98 (measuring 2 acres), Industrial Area, Phase-1, Panchkula after obtaining the necessary NOC/permission to transfer from defendants No.8 and 9 in respect of the Industrial Plot No.98 (measuring 2 acres), Industrial Area, Phase-1, Panchkula on payment of the balance sale consideration of

Rs.1,00,00,000/- (Rupees One Crore) or in the alternative directing defendants No.1 to 7 and 10 to 15 to refund the amount of Rs.15.51 crores alongwith interest @ 18% p.a. from the date of receipt of the payment till realization.

(ii) A decree for declaration that alleged cancellation of the agreement to sell dated 08.10.2010 and further the alleged agreement to sell dated 15.05.2011 alleged to have been signed by plaintiff No.5-Subhash Chand and the alleged full and final agreement to sell dated 30.06.2011 alleged to have been signed by plaintiff No.4-Prem Bansal and the receipt dated 17.05.2011 alleged to have been signed by plaintiff No.5 for Rs.82,90,000/- are illegal, null and void, result of fraud and forgery and the same are liable to be set aside and the same does not in any manner effect the rights of the plaintiffs in any manner and further the change of the directorship by defendants No.2 to 7 and 10 to 15 in the office of the Estate Office, HUDA, Panchkula regarding defendant No.1-M/s Friends Flour Mills Pvt. Ltd. are illegal, null and void and the same does not in any manner effect the rights of the plaintiffs.

(iii) A decree for permanent injunction restraining defendants No.1 to 7 and 10 to 15, their representatives and attorneys from alienating and creating any sort of charge upon the aforesaid Industrial Plot No.98 (measuring 2 acres), Industrial Area, Phase-1, Panchkula and further restraining defendants No.8 and 9 from granting permission to transfer the plot in question in favour of anybody else except the plaintiffs in any manner whatsoever.

Before proceeding further, it would be apposite to reproduce Order 7 Rule 11 of the Code which reads as under:-

> *"11.* ***Rejection of plaint.****- The plaint shall be rejected in the following cases:—*
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> *(a) where it does not disclose a cause of action;*
>
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*
>
> *(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*
>
> ***(d) where the suit appears from the statement in the plaint to be barred by any law****;*
>
> *(e) where it is not filed in duplicate;*
>
> *(f) where the plaintiff fails comply with the provision of Rule 9.*
> *Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."*

A perusal of Order 7 Rule 11 (d) of the Code provides for rejection of plaint where the suit appears to be barred by law on the basis of the statement made in the plaint. The Hon'ble Supreme Court in ***Srihari Hanumandas Totala's case (supra)*** has held that only statements made in the plaint are to be seen and considered while deciding an application under Order 7 Rule 11(d) of the Code. The Apex Court further observed that a plea requiring perusal of pleadings, issues and decisions of the previous suit is beyond the scope of Order 7 Rule 11 of the Code. It would be relevant to note that a plaint cannot be rejected merely on a formal or partial perusal of the same, rather, a meaningful reading of the plaint in its entirety, would be necessary to arrive at a conclusion as to whether or not the plaint deserves to be rejected. Further, it needs to be reiterated that while adjudicating upon an application under Order 7 Rule 11 of the Code, the defence of the defendants cannot be taken into consideration.

Adverting to the case in hand, the entire thrust of the submissions made by the learned senior counsel for the petitioners/defendants No.6 and 7 is based upon the pleadings made by respondents No.1 to 5/plaintiffs in the earlier suit for permanent injunction. It needs to be observed that for the purpose of deciding as to whether the instant suit is barred under Order 2 Rule 2 of the Code or not, a reference to the contents of the earlier plaint (Annexure P-2) cannot be made at this stage. As already observed earlier this Court is just required to restrict its inquiry to only the averments made in the plaint of the present suit, and any reference to the earlier plaint, cannot be made while adjudicating upon an application under Order 7 Rule 11 of the Code.

Coming to the question of limitation, this Court does not find any merit in the submissions made by the leaned senior counsel for the petitioners. No doubt, Article 54 of the Limitation Act, 1963 prescribes a period of three years for filing a suit for specific performance of a contract from 'the date fixed for specific performance or, if no such date is fixed, when the plaintiff has notice that the performance is refused'. However, in the instant case as per the agreement to sell dated 15.05.2011 "the target date for execution of transfer papers/sale deed was fixed on or before 05.11.2011 or within one month of the grant of the permission to transfer from the Estate

Officer, HUDA, Panchkula, whichever is later.....", therefore, the stipulation of executing the sale deed on or before 05.11.2011 would be of no consequence in case permission to transfer was not granted by Estate Office, HUDA, Panchkula prior to 05.11.2011.

Hence, in this case the date of refusal and its notice by respondents No.1 to 5/plaintiffs would be necessary for determining limitation. The issue of limitation being a mixed question of law and facts would only be ascertained after the parties have led their respective evidence.

The submissions made by learned counsel for proforma respondents No.6, 13 to 16 and 18 that respondents No.1 to 5/plaintiffs had due knowledge of the cancellation of the agreement to sell and had themselves executed agreement to sell dated 05.05.2011 and 30.06.2011, being their defence, cannot be considered at this stage. The Court cannot delve into an enquiry qua the truthfulness or otherwise of the averments made in the plaint at this stage. The Hon'ble Supreme Court in ***Saleem D. Agboatwala and others Vs. Shamalji Oddhavji Thakkar and others: 2021 (6) SC 502*** has held that rejection of plaint under Order 7 Rule 11 of the Code is a drastic power to terminate a civil suit at the threshold. Therefore, the condition precedent to the exercise of powers under this provision is stringent specially when rejection is sought on the ground of limitation. When the plaintiffs in the plaint claimed that they gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of adjudicating upon an application under Order 7 Rule 11 of the Code.

The reliance placed by the learned senior counsel for the petitioners on ***Virgo Industries' case (supra)*** would not come to their rescue as there no question of adjudication upon an application under Order 7 Rule 11 of the Code was involved therein. In this case, the plaintiff was well aware of the intentions of the defendants at the time of filing of the plaint and made categorical averments to the said fact. Hence, the cause of action for the subsequent suit had already arisen at the time of institution of the previous suit. The present case thus is clearly distinguishable from the facts of ***Virgo Industries' case (supra)***.

As a sequel to the above, the instant revision petition being devoid of any merit is dismissed.

23.08.2022 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No