

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

CR No.3367 of 2022

Date of decision: 24th August, 2022

Narinder Singh @ Narender Singh Bhatia

... Petitioner

Versus

Chhinder Pal & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. S.S. Dinarpur and Mr. Shubham Verma, Advocates
for the petitioner.

MANJARI NEHRU KAUL, J.

The instant revision petition has been filed under Article 227 of the Constitution of India for setting aside of the order dated 30.05.2022 (Annexure P5) vide which application under Order VII Rule 11 CPC moved by the defendant/petitioner for rejecting the plaint filed by the plaintiff/respondent No.1 for declaration to the effect that he is biological son of the defendant No.1, was dismissed.

Learned counsel for the petitioner, inter alia contends that the impugned order suffers from patent illegality and is contrary to the provisions of Order VII Rule 11 CPC. While inviting attention of this Court to the plaint, which has been annexed as Annexure P1, learned counsel submits that it is the admitted case of the plaintiff/respondent No.1 himself that he was born from the loins of Radha Rani respondent No.2 in October 1992. However, the suit in question was filed only in the

year 2016, which was much beyond the prescribed period of limitation. He further submits that the plaintiff/respondent No.1 should have filed the suit within three years of attaining the age of majority; however since he had failed to do so, the suit was clearly barred by limitation and it could not be said to be a mixed question of fact and law as observed by the Court below. It has still further been contended that the suit was also barred under Order II Rule 2 CPC as the respondent had earlier also instituted a suit for declaration, which was later dismissed as withdrawn. Learned counsel has, still further argued that it was a matter of record that respondent No.1 had admitted being the son of late Jee Ram in various proceedings and had also given an affidavit to the said effect in a Civil Suit, which fact had been erroneously ignored by the Court below while passing the impugned order. In support of his submissions, learned counsel has placed reliance upon **‘Kamlesh Babu & others vs. Lajpat Rai Sharma & others’ 2008(2) RCR (Civil) 872; ‘Sumtibai & others vs. Paras Finance Co. Mankanwar & others’ 2007(4) RCR (Civil) 524; and ‘Rajesh Singh vs. Hardev Kaur’ 2005(2) RCR (Civil) 282.**

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

Respondent No.1/plaintiff has filed the suit for declaration to the effect that he is the biological son of the petitioner. Order VII Rule 11 of the Code provides for rejection of plaint where the suit appears to be barred by law on the basis of a statement made in the plaint. A plaint

cannot be rejected merely on a formal or partial perusal of the same, rather a meaningful reading of the averments made therein, in their entirety would be necessary to arrive at a conclusion as to whether the plaint deserves to be rejected or not. Further, it needs to be reiterated that while adjudicating upon the application under Order VII Rule 11 CPC, the defense of the defendant cannot be gone into and no other extraneous factor can be considered.

Adverting to the case in hand, this Court is unable to concur with the submissions made by the counsel qua the suit being barred by limitation. In the plaint, the respondent has pleaded that the petitioner had assured respondent No.2 that she would be kept by him and he would maintain her along with her other children including the respondent/plaintiff. It was also averred in the plaint that under the guise of getting financial support, the petitioner fraudulently got recorded Jee Ram as father of respondent No.1.

It would be relevant to reproduce paragraph No.19 of the plaint, which relates to the cause of action:-

“9. That the cause of action arose previously for last months the defendant No.1 neglect towards the plaintiff and defendant No.2 and in the last week, the plaintiffs told the defendant No.1 that he should be marriage with the defendant No.2 and gave actual rites to his son i.e. plaintiff but the defendant No.1 put on the matter on one pretext or the other and lastly the defendant No.1 totally refused to the genuine request of the plaintiff and defendant No.2 and

on this the plaintiff told the defendant No.2 that defendant No.1 put the plaintiff and defendant No.2 in dark by giving false assurances, the defendant No.1 threatened the plaintiff he cannot do anything for them and by this way the defendant No.1 harass and humiliate the plaintiff and defendant No.2.”

On a reading of the above reproduced extract of the plaint and the circumstances mentioned therein, this Court has no hesitation in observing that the issue of limitation would be a mixed question of law and facts, which could be and would be only decided after the parties have led their respective evidence.

The case law relied on this point would not come to the rescue of the petitioner in view of the averments made in the plaint (Annexure P1).

The Hon’ble Apex Court in ‘**Saleem D. Agboatwala & others vs. Shamalji Oddhavji Thakkar & others**’ 2021 (6) SC 502 has categorically observed that since rejection of plaint under Order VII Rule 11 of the Code is a drastic power to terminate a Civil Suit at the threshold, the condition precedent to the exercise of powers under this provision are therefore stringent. When rejection of a plaint is sought on the grounds of limitation, the averments made in the plaint by the plaintiff as to on which date the essential facts giving rise to the cause of action came to him/her knowledge would alone have to be considered

and accepted as well, while deciding an application under Order VII Rule 11 of the Code.

Furthermore, the contention of the learned counsel that the suit in question is barred under Order II Rule 2 CPC, on account of the admission made by the respondent No.1 during various previous proceedings, deserves to be rejected being devoid of any merit. It needs to be observed that for deciding as to whether the suit is barred under Order II Rule 2 CPC or not, a reference to the contents of the earlier plaint cannot be made, rather only the averments made in the suit in question are to be considered and seen.

As a sequel to the above, this Court is not inclined to exercise its jurisdiction. Consequently, the present petition being devoid of any merit, stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

August 24, 2022

rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No