

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

CR-7137-2019

Date of decision: 09.08.2022

Rakesh Singh

.....Petitioner

versus

Ghanshyam

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Prashant Singh Chauhan, Advocate
for the petitioner.

Mr. S.P. Sharma, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 01.10.2019 (Annexure P-4) passed by the trial Court vide which, an application filed by the petitioner under Order 7 Rule 11 CPC was partly dismissed *qua* the question of limitation raised by the petitioner/defendant, however, it was partly allowed with regard to the deposit of the *ad valorem* Court fee on the value as per the plaint.

Brief facts of the case are that the respondent/plaintiff initially filed a suit for recovery of Rs.1,36,000/- along with interest before the Civil Court at Charkhi Dadri on 11.09.2014. In the suit, the cause of action was pleaded as 08.10.2011 that is to say that the suit was instituted just one month before the period of expiry of limitation to file the suit for recovery.

Later on, the respondent/plaintiff filed an application for withdrawal of the said suit with permission to file afresh, primarily on the ground that the suit was instituted at the Court which had no jurisdiction. The suit was withdrawn by giving a statement and on 06.12.2012, the following order was passed:-

“Today case was fixed for ex parte arguments, however, counsel for plaintiff appeared and suffered a statement that at this stage, he does not want to further proceed with the present suit and withdraws the same and permission may be granted to file the fresh suit. In view of the statement, the present suit stands dismissed as withdrawn with permission to file the fresh suit. File be consigned to Record Room after due compliance.”

Thereafter, it appears that the respondent/plaintiff filed an application before the same Court for return of the original promissory note on the basis of which, the suit was filed as well as the Court fees. The application was filed on 23.05.2015 with the following prayer:-

“It is therefore, respectfully prayed that in the interest of justice the order dated 06.12.2014 passed by this Hon'ble Court may kindly be corrected and the original promissory note and receipt and court fee may kindly be supplied to the plaintiff/applicant in the interest of justice.”

During pendency of the said application, another application was moved by the respondent/plaintiff on 16.02.2016, in which the following amended prayer was made:-

“It is therefore, respectfully prayed that in the interest of justice the order dated 06.12.2014 passed by this Hon'ble Court may kindly be reviewed and the original

promissory note and receipt and court fee may kindly be supplied and permission to file fresh suit be granted, it will be highly grateful.”

The trial Court vide, on 17.02.2016 passed the following order:-

“This is an application for refund of court fee to the applicant. Main file received from Record Room. Order dated 06.12.2014 is modified to the effect that Court fee affixed on the plaint be returned to the plaintiff, after retaining attested photocopies of stamps papers on file and the permission to file fresh suit, as requested is granted. File be consigned to the records, after due compliance.”

The plaintiff accordingly filed the suit at Mahendergarh on 06.04.2016.

The petitioner/defendant appeared and moved an application under Order 7 Rule 11 of CPC on two accounts; firstly, that the *ad valorem* court fee has not been fixed on the suit and secondly, that the suit is barred by limitation as per the cause of action set up by the plaintiff in the earlier suit, i.e. 08.10.2011, which stands unchanged.

The trial Court vide impugned order dated 01.10.2019 passed the following order:-

“4. I have heard Sh. K.S. Rathore, counsel for the applicant and Sh. V.P. Yadav, counsel for the respondent and has gone through the case file carefully.

5. Whatever has been pleaded that has been argued at bar.

6. Issue to be decided in the present application are as follows:-

(a) Whether the suit of the plaintiff is barred by any law?

(b) Whether the plaintiff is required to affix fresh stamp papers?

Issue No.6(a).

7. For deciding application under Order 7 Rule 11 of the CPC, it is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendant in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint, ex-facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law, the plaint can be rejected. In all other situations, the claim will have to be adjudicated in the course of the trial. Further reliance can be placed on authority **P.V. Guru Raj Reddy Rep. by GPA Laxmi Narayan Reddy & Anr. Versus P. Neeradha Reddy & Ors. Etc. 2015(2) CCC 513 (S.C.)**.

8. In the present case, on plain reading of the plaint reveals that vide order dated 06.12.2014 passed by Sh. Naveen Kumar, the then Ld. Civil Judge Jr. Divn. Charkhi Dadri, previous suit titled as “ Ghanshyam Vs Rakesh CS-72820- 2014” was permitted to be withdrawn with a liberty to file the fresh suit. That vide order dated 17.02.2016 passed by Sh. Naveen Kumar, the then Ld. Civil Judge Jr. Divn. Charkhi Dadri, in aforesaid suit, fresh permission was granted to the plaintiff to file the fresh suit and court fees affixed on the plaint was also ordered to be returned to the plaintiff after retaining the attested photocopies of the same on the main case file and the main case file was consigned to the record room accordingly. That after passing the said order, present suit has been filed on 06.04.2016 by the plaintiff. In aforesaid situation, section 14 of The Limitation Act, 1963 comes into play. For reference, Section 14 of the said Act is reproduced hereinafter:

“14. Exclusion of time of proceeding bona fide in court without Ghanshyam Vs Rakesh Singh jurisdiction-

(1) In computing the period of limitation for any

suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and in prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain in.

(2) in computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or appeal or revision against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) notwithstanding anything contained in rule 2 of order XXIII of the Code of Civil Procedure, 1908 (5 of 1908) the provisions of Sub-Section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under Rule 1 of the order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation-

(a) in excluding the time during which a former civil proceeding Ghanshyam Vs Rakesh Singh was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding:

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction”.

On perusal of afore-said provision, it is clear that time spent diligently in pursuing remedy in the wrong court shall be

excluded in computing the period of limitation. Meaning thereby, period of limitation in present suit shall start to run with effect from 17.02.2016. On perusal of case file, it comes up that present suit has been filed on 06.04.2016. Meaning thereby present suit has been filed within limitation as time spent during pursuing previous suit is to be excluded as per Section 14 of the Limitation Act. Further reliance can be placed on case law authority titled as “**M/s Sonia Overseas Pvt. Ltd. Vs Union of India & others 2015 (1) RCR (Civil) (P & H), M/s Consolidated Engg. Enterprises Vs Principal Secy. Irrigation Deptt. & others 2008 (2) RCR (Civil) (S.C.) and Ayisu Vs Saidu 2015 (5) RCR (Civil) (Kerla High Court)**”. Moreover, it is well settled that issue of limitation is mixed question of fact and law which can be adjudicated only after taking evidence. So, at this stage, without having any evidence on record, it cannot be concluded that suit of the plaintiff is barred by limitation. Hence, issue no.6(a) is not proved in favour of applicant.

Issue No.6(b).

9. As far as filing of fresh stamp papers is concerned, admittedly stamp papers affixed on the plaint has been used in the previous suit. It is settled law that stamp papers once affixed cannot be reused for any purpose. Moreover, learned Ghanshyam Vs Rakesh Singh counsel for the respondent submitted at bar that he is ready to affix/pay fresh stamp papers on the next date of hearing. In view of aforesaid discussion, issued No. 6(b) is proved in favour of applicant accordingly. Hence, in view of aforesaid discussion, this court is of considered view that plaintiff is required to pay fresh court fees/stamp papers. Accordingly, application in hand is hereby disposed of.

10. However, nothing contained herein shall be taken to be expression on the merits of the case and the observation made herein above are for the purpose of the this application only.”

The counsel for the petitioner/defendant has assailed the aforesaid order on the ground that as per the original cause of action in the first suit filed at Charkhi Dadri, the same accrued to the respondent/defendant on 08.10.2011, i.e. the day when promissory note was returned and money paid, whereas, the suit was instituted on 11.09.2014 i.e. one month prior to the expiry of the date of limitation. The said suit was dismissed as withdrawn on 06.12.2014 with liberty to file afresh, however, there was no such direction with regard to extending the time of limitation in terms of Section 14 of the Limitation Act.

Admittedly, in the intervening period, two successive applications dated 23.05.2015 and 16.02.2016 (Annexures P-7 and P-8, respectively), filed by the respondent/plaintiff, remained pending before the competent Court at Charkhi Dadri in which, at the first instance, the plaintiff only sought for return of promissory note and *ad valorem* court fee and realizing that his cause of action has already lapsed due to law of limitation, the second application was filed with a prayer to grant fresh liberty to file the said suit.

The counsel for petitioner submits that when the application (Annexure P-8) was allowed, no suit was pending before the Civil Court at Charkhi Dadri and, therefore, there was no occasion for the said Court to grant any such permission to file fresh suit, vide order dated 17.02.2016.

Counsel further submits that in view of the provisions of

Article 35 of the Limitation Act, the period of three years has already lapsed. Counsel for the petitioner has relied upon the judgment of this Court in 'Ved Prakash and others versus Rajpal and others' in RSA No.740 of 2013 (O&M) decided on 15.10.2019, wherein, it is held that when the suit is withdrawn and a subsequent suit is filed in terms of Article 35 of the Limitation Act, the limitation will start from the accrual of the date of first cause of action to the plaintiff and, therefore, the suit is apparently time barred.

Counsel for the respondent has argued that the first application was filed only for return of the promissory note and the *ad valorem* court fees and the second application was in fact, an application for reviewing the earlier order dated 06.12.2014 as the correction could not be made by the said Court.

The counsel for the respondent has further submitted that the limitation would stand extended from the fact that the documents were returned only on 17.02.2016 and, thereafter, the suit was filed on 06.04.2016 within a period of two months, therefore, the suit is within limitation by excluding the intervening period in terms of Section 14 of the Limitation Act.

After hearing learned counsel for the parties and going through the impugned order, I find merits in this case.

On the face of it, the first cause of action accrued to the respondent/plaintiff on 08.10.2011 and the limitation was three years under Article 35 of the Limitation Act and the first suit was filed on

11.09.2014 i.e. within a period of three years, however, the same was dismissed as withdrawn on 06.12.2014 after the period of limitation has already lapsed with permission to file afresh at the competent Court of jurisdiction. Later on, the defendant filed an application for return of the promissory note and *ad valorem* court fee and again an application was moved for reviewing the order dated 06.12.2014 that liberty be granted to file a fresh suit after the documents and court fee are returned and on 17.02.2016, while returning the same, the Civil Court at Charkhi Dadri observed that permission to file fresh suit is granted.

Apparently, the Court had no jurisdiction on that day to grant any such permission as the suit already stood dismissed as withdrawn on 06.12.2014 and, therefore, the application for extending the time or review of the earlier order dated 06.12.2014, was not maintainable.

Even otherwise once the suit was withdrawn on 06.12.2014, the application for reviewing the said order could not be allowed by the same Court without issuing notice to petitioner/defendant as an important right to contest on ground of limitation has accrued in his favour and the order dated 17.02.2016 passed at the back of petitioner is otherwise erroneous.

The respondent/plaintiff never requested the trial Court to return the plaint on the ground that it is filed before a Court having no jurisdiction, so as to present it again before competent Court of law rather the plaintiff had chosen to withdraw the suit with liberty to file

fresh and therefore, by efflux of time the limitation expired when second suit was filed.

The stage when suit was withdrawn i.e. on 06.12.2014, the original limitation of 03 years had already lapsed on 08.11.2014 from date of cause of action i.e. 08.11.2011 as per own case of plaintiff and therefore, no benefit under Section 14 of Limitation Act could be granted.

Accordingly, finding that the suit filed by the respondent/plaintiff is time barred as well as in the absence of any such order passed by the said Court returning the plaint with liberty to present the same before the competent Court of jurisdiction at Mahendergarh, the suit is apparently time barred. Accordingly, the present petition is allowed and the impugned order is set aside and plaint is rejected.

(ARVIND SINGH SANGWAN)
JUDGE

09.08.2022

Neha/Waseem Ansari

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