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

**CR No. 5978 of 2022
Date of decision : 20.12.2022**

EMSON TRADERS AND ANR.**..... PETITIONER****VS****SURESH KUMAR KALRA****..... RESPONDENT****CORAM : HON'BLE MR.JUSTICE ALOK JAIN**

Present :- Mr. Abhishek Sethi, Advocate for the petitioner.

ALOK JAIN, J. (Oral)

1. The present revision petition raises challenge to the order dated 19.11.2022 (Annexure P-5) passed by learned Civil Judge (Sr. Division), Jagadhari at Yamuna Nagar, whereby the application under Order 7 Rule 11 of CPC filed by the petitioners-defendants has been dismissed.

2. Learned counsel for the petitioners has vehemently argued that the learned Court below has fell in error in dismissing the application, despite the fact that the petitioners had demonstrated in clear terms that the suit itself was time barred and moreso, the plaintiff was not authorized to seek any recovery for the reason that the said amount as alleged was transferred from the personal account of his father-in-law, whereas the TDS sought to be submitted pertained to the firm. Counsel for the petitioners has again vehemently argued that by virtue of the provisions of Article 19 of the Limitation Act, the suit was *per se* barred but the learned Court below has failed to consider the same.

3. Counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court of India in 2008 (2) RCR, Civil, 872 in case titled as **"Kamlesh Babu & Ors. Vs. Lajpat Rai Sharma and Ors.,** to contend that as per Section 3(1) of the Limitation Act, a duty is casted upon the Court to dismiss a suit or an appeal or an application, if made after the prescribed period, even if limitation is not set up as a defence. He has also relied upon the judgment cited as 1996 (2) CCC 558 to contend that the acknowledgement must be the in form of writing either in the handwriting of the payer himself or at least signed by him and the said acknowledgement should be before the expiry of period of limitation.

4. Learned counsel for the petitioners has also relied upon the judgments of Hon'ble Supreme Court of India in case titled as "Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) (D) Thr. Lrs and Ors., 2020(7)SCC 366 and "Kamlesh Babu & Ors. Vs. Lajpat Rai Sharma and Ors.,2008(12)SCC, 577, judgment of this Court in case titled as"Brijeshwar Swaroop and Ors. Vs. Adish Aggarwal and Ors." 2017 (4) RCR (Civil) 888, judgment of Himachal Pradesh High Court in case titled as " Kangra District Whole Sale Cooperative Supplies and marketing Society Ltd. Vs. M/s Buta Mal Sohal Lal,1996(2)CCC, 558, judgment of Bombay High Court in case titled as "Dalichand Jugraj Jain Vs. M/s Madhu Wool Spinning Mills and Ors.,2000(3)CCC, 522, judgment of Andhra Pradesh High Court in case titled as "Kollipara Suryanarayana Vs. State Bank of India",1989,CCC, 36. 5

5. Having heard the counsel for the petitioners at length, this Court is of the view that the rigours of Order 7 Rule 11 of CPC are very strict. It is settled principle of law that the issue of limitation is a matter of fact and law, which cannot be adjudicated upon, at the threshold, as the respondent has

claimed acknowledgment by virtue of the TDS deducted by the petitioners and deposited with the statutory authorities. Although the said issue of TDS is objected to, by the petitioners and it is submitted that the TDS was deposited in the account of the firm whereas the alleged loan had been advanced by the father-in-law of the respondent from his personal account. The learned trial Court, after considering all the contentions has rightly held that the averments of the plaint alone have to be considered, while deciding the application under Order 7 Rule 11 of CPC. The plaint discloses the cause of action and the defence of the petitioners that the TDS certificates pertained to the firm and not to the personal account of the late father-in-law of the plaintiff cannot be looked into for the purpose of deciding the said application. For the proper adjudication of the matter Order 7 Rule 11 of CPC is reproduced as below:

11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

- (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.

6. A perusal of the same clearly shows that an application under Order 7 Rule 11 of CPC would be maintainable only in the back drop where the suit *per se* is barred by any law and there is no cause of action and/or the

relief claimed is beyond the purview of law in force. The plaint cannot be rejected on the basis of allegations made by the defendants. The counsel for the petitioners has not been able to demonstrate that the plaint does not disclose any cause of action.

7. Even, the Hon'ble Supreme Court of India in case titled as "*Saranpal Kaur Anand Vs. Praduman Singh Chandhok and Others*", 2022 (2) RCR (Civil) 536 held that for the purpose of rejecting the plaint on the ground that the suit is barred by any law, only the averments made in the plaint have to be referred to and that the defence taken by the defendant in the written statement being wholly irrelevant, must not be considered.

8. In the light of the above, finding no infirmity or perversity in the order passed by the trial Court, the present petition is dismissed, however the finding returned or any observation made in the present order and/or order of the learned trial Court shall not have the bearing on the trial of the main suit and further the petitioners may take all defences available to them in accordance with law including the issue of limitation.

(ALOK JAIN)
JUDGE

20.12.2022

Manju

Whether speaking/reasoned :Yes

Whether Reportable :Yes