

CR-5571 of 2016 (O&M)

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

CR-5571 of 2016 (O&M)
Reserved on: 07.08.2023
Pronounced on: 14.09.2023

Smt. Mohini Punani (now deceased) through her LRs and others
.....Petitioners

Versus

Sham Lal Chopra (now deceased) through his LRs and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Ashwani Talwar, Advocate,
for the petitioners.

Mr. Amit Jain, Sr. Advocate, with
Mr. Varun Parkash, Advocate,
for respondents No.1(i), 2(ii) & (iii), 4 and 5.

NAMIT KUMAR, J.

1. Instant revision petition has been filed by the petitioners/defendants impugning the order dated 21.05.2016 passed by the Court of learned Civil Judge (Junior Division), Panipat, whereby their application filed under Order 7 Rule 11 CPC, has been dismissed.

2. Brief facts relevant for the disposal of the present revision petition are that respondents/plaintiffs filed a suit for mandatory injunction directing the defendants to disclose the name of collaborators/vendee and further the present market price fixed/to be fixed of the 14 shops in question (in ratio of entire building) situated at basement of Seema Cinema, Panipat, and also disclose all the terms and

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conditions settled/to be settled by the defendants with the said collaborators/vendee in compliance to agreement dated 17.07.1997, 11.08.2001, 04.02.2006, 12.10.2006 and 19.02.2007, respectively, and further to direct the defendants to release the price of said 14 shops situated at the basement of Seema Cinema, Panipat, without any further delay and settle the matter by complying with the terms and conditions of the agreement dated 19.02.2007 in view of the terms and conditions settled in the earlier agreement dated 17.07.1997 and further direction to the defendants to release the 40% amount to the plaintiffs of the entire sale consideration of the entire building situated near Hali Park Seema Theatre, Panipat, with a consequential relief of permanent injunction restraining the defendants from selling/alienating the disputed 14 shops till payment to be made in 40% ratio of the entire building. Defendants filed their written statement. They also filed an application under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint, which has been dismissed by learned Civil Judge (Junior Division), Panipat, vide impugned order dated 21.05.2016.

3. Learned counsel for the petitioners submitted that since the claim raised in the suit was time-barred, therefore, the suit was liable to be dismissed as the last agreement is dated 19.02.2007 whereby time period was extended by one year i.e. upto 19.02.2008 and since the suit was filed on 06.05.2011, therefore, the same was barred by limitation as having been filed beyond the period of three years from 19.02.2008. He further submitted that prior to 19.02.2007 there were two agreements executed on 04.02.2006, which was for a period of

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three months and 12.10.2006, which was again valid for a period of three months and, therefore, since in the last preceding 12 months there were three agreements, nothing prevented the parties from executing another agreement. He further submitted that present case is of clever drafting on the part of the plaintiffs to bring the time barred suit within the ambit of limitation and the same would not extend the period of limitation and consequently, the application filed by the petitioners/defendants under Order 7 Rule 11 CPC is liable to be accepted. Learned counsel for the petitioners referred to the judgments of the Hon'ble Supreme Court in *Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) dead through legal representatives and others, (2020) 7 Supreme Court Cases 366*; *Raghwendra Sharan Singh v. Ram Prasanna Singh (dead) by LRs, 2019 SCC OnLine SC 372*; *N.V. Srinivasa Murthy and others v. Mariyamma (dead) by Proposed LRs and others, 2005(3) R.C.R.(Civil) 414*; *Sopan Sukhdeo Sable and others v. Assistant Charity Commissioner and others, (2004) 3 Supreme Court Cases 137*; *T. Arivandandam v. T.V. Satyapal and another, 1977 (4) Supreme Court Cases 467*; *Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 Supreme Court Cases 174*; *Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman v. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee, (2012) 8 Supreme Court Cases 706*; *Pearlite Liners (P) Ltd. v. Manorama Sirsi, (2004) 3 Supreme Court Cases 172* and this Court in *Mohan Lal*

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Sondhi and another v. Surinder Parbhakar and others, 2011(52) R.C.R.(Civil) 375.

4. Per contra, learned senior counsel appearing for the respondents has submitted that firstly while considering the application under Order 7 Rule 11 CPC, the Court is only to see the averments made in the plaint. He further submitted that even the written statement cannot be taken into consideration while considering the application under Order 7 Rule 11 CPC and since it was a mixed question of facts and law, therefore, the application filed by the petitioners/defendants has rightly been rejected by the Court below. He further submitted that time was never the essence of the agreement and merely because the agreement dated 19.02.2007 was said to have been extended for a period of one year i.e. upto 19.02.2008 does not mean that the period of three years would start from that day. He further submitted that the cause of action to file the present suit for mandatory injunction for seeking directions to the petitioner/defendants to disclose the name of collaborator/vendee and to present the market price fixed/to be fixed for 14 shops in basement of Seema Theatre according to the terms of agreement dated 19.02.2007 accrued to the respondents/plaintiffs after the petitioners/defendants flatly refused their liability on 25.04.2011. He further contended that as per clauses of the agreement dated 19.02.2007 the respondents/plaintiffs were specifically restricted to claim the amount till the collaboration selling the shops. Thus the cause of action would accrue only after the construction is raised and the shops were sold by the defendants/collaborators. He further

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contended that the aspect as to when the limitation began to run would be a matter of evidence and trial and cannot be adjudicated at the stage of filing of application under Order 7 Rule 11 CPC. He further submitted that the purpose of inserting Order 7 Rule 11 CPC is to prevent the plaintiff from abusing the process of law and discourage from indulging in avoidable litigation, however, same cannot come to the aid of a dishonest defendant to oust the *bona fide* claim of the plaintiff as in the present case the defendants have borrowed money from the plaintiffs and have failed to repay the same and they are now avoiding their liability under the agreement. Learned senior counsel referred to the judgments of the Hon'ble Supreme Court in *Salim D. Agboatwala and others v. Shamalji Oddhavji Thakkar and others*, 2021 AIR (Supreme Court) 5212; *P.V. Guru Raj Reddy Rep. by GPA Laxmi Narayan Reddy and another v. P. Neeradha Reddy and others etc.*, 2015(2) R.C.R.(Civil) 43; *Chhotanben and another v. Kiritbhai Jalkrushnabhai Thakkar and others*, 2018(5) R.C.R.(Civil) 163; *Urvashiben and another v. Krishnakant Manuprasad Trivedi*, 2019(1) R.C.R.(Civil) 366; *Madina Begum and another v. Shiv Murti Prasad Pandey and others*, 2016(3) R.C.R.(Civil) 952; *Gunwantbhai Mulchand Shah and others v. Anton Elis Farel and others*, 2006(2) R.C.R.(Civil) 251 and this Court in *Kulwant Kaur Sidhu v. Mohinder Partap Singh Dhillon*, 2017(3) R.C.R.(Civil) 165.

5. I have heard learned counsel for the parties and with their able assistance perused the record.

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6. Plaintiff/respondents filed a suit for mandatory injunction directing the defendants/petitioners to disclose the names of collaborators/vendees the present price fixed/to be fixed of the 14 shops in question situated in the basement of Seema Cinema, Panipat, in compliance to the agreements dated 17.07.1997, 11.08.2001, 04.02.2006, 12.10.2006 and 19.02.2007, respectively. It was further prayed that the petitioners be directed to release the price of said 14 shops without any further delay and settle the matter by complying with the terms and conditions of the agreement dated 19.02.2007 and further the petitioners be directed to release 40% amount to the plaintiffs of the entire sale consideration of the entire building of Seema Theatre, Panipat. The terms and conditions of the last agreement dated 19.02.2007 whereby the same was extended for another one year are as under: -

- “A. That the borrowers are collaborating the complex with some company to renovate the whole complex in shape of mall.*
- B. It is mutually decided that the value of 14 shops in the basement the value decided by the collaborators/vendee without renovation will be paid only in cash to the plaintiffs.*
- C. Further all plaintiffs and their family members will not claim interest or compensation from the borrower.*
- D. It is also mutually decided that the plaintiffs will not claim amount of the shops till the collaboration/selling of the project.”*

7. It is pertinent to mention here that petitioner/defendants have filed application under Order 7 Rule 11 CPC for rejection of the plaint by stating that no cause of action has accrued in favour of the plaintiffs against the defendants; secondly, that the suit for mandatory injunction is not maintainable; thirdly, that to avoid affixing of court fee suit for mandatory injunction has been filed and lastly it was stated that suit is time barred. However, instant revision petition has been preferred only on the ground that the suit is time barred and even during the course of arguments, the arguments have been addressed on this issue only.

8. Before proceeding further, it is relevant to reproduce the provisions of Order 7 Rule 11 CPC, which read as under: -

“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.”

9. So far as contention of the learned counsel for the petitioners for rejection of plaint on the ground of limitation is concerned, it needs to be considered that in the present facts and circumstances of the case, limitation being a mixed question of facts and law and, the plaint cannot be rejected at the threshold without considering the complete pleadings and evidence to be led in the trial. The Hon’ble Supreme Court in **Salim D. Agboatwala’s** case (supra) has held that limitation is a mixed question of facts and law and, therefore, the necessary issue regarding limitation depends upon evidence. To the same effect is the judgment of the Hon’ble Supreme Court in **P.V. Guru** (supra), wherein it has been held that the Court is empowered to reject the plaint under Order 7 Rule 11 CPC, however, the conditions precedent to the exercise of the said power are stringent and have been consistently held to be so by the Court and 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 and at the stage of exercise of power under Order 7 Rule 11 CPC, the stand of the defendants in the written statement or in the

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application for rejection of plaint is wholly immaterial and it is only if the averments made in the plaint *ex facie* do not disclose a cause of action or the suit appears to be barred under any law, the plaint can be rejected. Para 5 of the judgment **P.V. Guru's** case (supra) reads as under: -

*“5. Rejection of the plaint under Order VII rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII rule 11, therefore, are stringent and have been consistently held to be so by the Court. 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 VII rule 11, the stand of the defendants 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 claims will have to be adjudicated in the course of the trial.”*

To the same effect are the judgments in the cases of **Chhotanben; Urvashiben; Madina Begum; Gunwantbhai** and **Kulwant Kaur** (supra). Further, the purpose of inserting Order 7 Rule 11 CPC is to prevent the plaintiff from abusing the process of law and discourage from indulging in avoidable litigation, however, same cannot come to the aid of a dishonest defendant to oust the *bona fide* claim of the plaintiff.

10. In the present case, agreement was entered into between the parties for five times and on 19.02.2007, the last date of agreement, was further extended for one year. Article 54 of the Limitation Act, 1963 provides for limitation of three years for specific performance of contract and time from which period being to run is the date fixed for the performance or if no such date is fixed when the plaintiff has noticed that performance is refused and hence the same is mixed question of facts and law and would be determined during the trial. It is also admitted case that defendants have borrowed money from the plaintiff-respondents and have failed to repay the same and now are evading the liability under the agreement by filing application under Order 7 Rule 11 CPC.

11. So far as the judgments cited by learned counsel for the petitioners wherein it has been held that on the basis of some clever drafting the plaintiff cannot bring the suit within the period of limitation if otherwise same is barred by limitation are concerned, there is no quarrel with the proposition, however, since in the present case, time is not the essence of agreement and limitation being a mixed question of fact and law, the said judgments are not applicable to the facts of the present case.

12. Learned counsel for the petitioners has not been able to point out any illegality or perversity in the impugned order, which may call for any interference by this Court. Hence, the present revision petition is dismissed.

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13. However, observations made hereinabove shall not be construed as an expression of opinion on the merits of the case, the same have been made only to decide the present revision petition.

14. Interim order dated 01.03.2019 stands vacated. Present suit relates to year 2011 and present revision petition remained pending since 2016 and since considerable time has already gone by, this Court is sanguine that trial Court shall make endeavour to decide the suit within a period of one year.

14.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No