

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

CR-1820-2019 (O&M)

Date of decision: 06.02.2023

Haryana Waqf Board, Ambala

...Petitioner

Versus

Ravinder Kaushik

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. G.N. Malik, Advocate for the petitioner.

None for the respondent.

H.S. MADAAN, J. (Oral)

Under challenge in this revision petition is order dated 01.02.2016 passed by Civil Judge (Sr. Divn.) Jhajjar, vide which in a suit filed by Haryana Wakf Board against Ravinder Kaushik, on an application under Order 7 Rule 11 CPC, having been filed by the defendant, the plaint was rejected on the ground of suit being time barred as well as for the reason of bar of *res judicata*. The order passed by District Judge, Jhajjar dated 07.12.2018 affirming that order and dismissing the appeal is also being challenged in this revision petition.

Notice of the revision petition was given to the respondent, who had initially put in appearance through counsel but subsequently stopped appearing.

I have heard learned counsel for the revision petitioner

besides going through the record and I find that the impugned orders are not sustainable. Of course, limitation is a mixed question of law and fact and a suit could not have been dismissed in the manner which has been so done by the trial Court. Furthermore, in terms of judgment **Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors.**, 2021 (3) RCR (Civil) 768, by the Apex Court, *res judicata* is not a ground to reject the plaint under Order 7 Rule 11 (d) CPC for the reason that evidence is required to be led to establish that objection. The plaint was rejected for two such reasons by the trial Court and this order was wrongly affirmed by the Ist Appellate Court. The orders are not sustainable and are hereby set aside by way of acceptance of revision petition.

Accordingly, the present revision is allowed. The suit in question is ordered to be restored at its original number. The trial Court may start the proceedings afresh and then dispose of the suit on merits in accordance with law.

06.02.2023

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No