116

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1673-2023
Date of Decision:- 22.08.2023

MANJIT SINGH AND ORS. ....Petitioners.

Vs.

AMRITPAL SINGH AND ANR. .....Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Puneet Jindal, Sr. Advocate with
Ms. Navroop Jawanda, Advocate and Ms. Ritu Punj,
Advocate for the petitioners.

Mr. Ashish Chopra, Sr. Advocate with
Mr. Gagandeep Singh, Advocate for the respondents.

*****

AMARJOT BHATTI, J. (Oral)

1. The petitioners/defendants Manjit Singh and others have filed present civil revision for quashing of order dated 11.01.2023, Annexure P-1, passed by learned Civil Judge (Jr. Divn.), Ludhiana in Civil Suit No.54/2021 titled as “Amritpal Singh and another Vs. Ranjit Singh and others” for mandatory injunction directing the defendants to return the entire advance money of Rs.1.50 crore which was received by them from the plaintiffs on the basis of agreement dated 21.03.2008 along with compensation and interest as detailed therein, in which their application for rejection of plaint under Order 7 Rule 11 CPC was declined by passing the impugned order against the settled law.

2. The learned counsel for the petitioners argued that the petitioners are owners of land in dispute in two villages namely village

SANDEEP
2023.08.31 16:18
I attest to the accuracy and
integrity of this document

Bonkar Dogran, Tehsil and District Ludhiana and village Mujara Khurd, Tehsil and District Ludhiana. At one point of time, one agreement to sell dated 21.03.2008 was executed by Zorawar Singh for himself and on behalf of others in favour of Manjit Kaur, respondent No.2 wife of respondent No.1, regarding 23 Kanals 11 Marlas of land in village Mujara Khurd and the same was later-on cancelled/rescinded as purchaser was not able to pay balance sale consideration upto the time fixed i.e. 15.12.2008 due to non-availability of funds. Even though the sellers were ready and willing to perform their part of agreement to sell. The period of limitation of 3 years has expired on 15.12.2011 to claim specific performance of agreement or to recover the amount paid under the agreement. The copy of agreement to sell dated 21.03.2008 is Annexure P-2. Another agreement of sale was also executed on 21.03.2008 regarding sale of 19 Kanals 2 Marlas of land regarding the share of vendor Jorawar Singh and others as detailed in the agreement in favour of Amritpal and Manjit Kaur respondent Nos.1 and 2. The copy of second agreement to sell dated 21.03.2008 is Annexure P-3. In the first agreement, the installment of Rs.1 crore was to be paid on 03.07.2008 and rest of the amount i.e. Rs.7,59,06,250/- out of total sale consideration of Rs.9,59,06,250/- was to be paid on 15.12.2008 which was not paid. Similarly, in the second agreement to sell the entire consideration of Rs.3,91,56,250/- out of sale consideration of Rs.4,41,56,250/- was to be paid on 15.12.2008 by the respondents but the same was not paid. The respondent Nos.1 & 2 have not paid the balance sale consideration, so the petitioners had the apprehension that they would not pay them total consideration as the cut-off date was 15.12.2008. They had sent telegrams dated 12.12.2008 which are Annexures P-4 and P-5. The petitioners also

SANDEEP
2023.08.31 16:18
I attest to the accuracy and
integrity of this document

appeared before the Sub Registrar on 15.12.2008 but the respondent Nos.1 and 2 did not turn up. Again a legal notice dated 23.12.2008 was issued calling upon the respondents to come with the balance sale consideration on 30.12.2008. The copy of legal notices dated 23.12.2008 are Annexures P-6 and P-7. Again the petitioners appeared before the Sub Registrar on 30.12.2008 but the respondents did not turn up. During this period the land was acquired by National Highway Authority to widen the bye-pass vide notification dated 18.09.2015. The award amount/compensation is yet to be disbursed by the competent authority. The respondents had no right to file objections for the release and disbursement of compensation in favour of the petitioners. The respondents started giving threats to the petitioners and also implicated them in a false criminal case. The respondents were aware that they could not avail the remedy by way of specific performance of agreement or for recovery of the alleged amount paid by them. Therefore, they filed complaint before Commissioner of Police, Ludhiana under Sections 406, 420, 120-B and 506 IPC by alleging that the agreements were executed with malafide intention. Thereafter, the present suit for mandatory injunction to return the advance money was filed along with the relief for restraining the Collector to release the amount of compensation. The copy of plaint is Annexure P-9. They also filed application under Order 38 Rule 5 CPC, which is Annexure P-10. The petitioners filed their respective replies taking the stand that the suit is hopelessly barred by limitation. Copy of reply dated 18.03.2021 and 19.03.2021 are Annexures P-11 & P-12. The petitioners also filed application under Order 7 Rule 11 CPC dated 19.03.2021 as the plaintiffs in that case were liable to pay Court fee and the suit was not maintainable

SANDEEP
2023.08.31 16:18
I attest to the accuracy and
integrity of this document

on the ground of delay. The copy of application is Annexure P-13. They filed reply to another application under Order 7 Rule 11 CPC dated 22.03.2021 taking objections of stamp duty which is Annexure P-14. The application for deposit of deficient court fee was disposed off as they were ready to deposit the Court Fee. The copy of order dated 07.04.2021 is Annexure P-15. The present petitioners also filed CRM-M-42590-2021 for quashing of order dated 30.09.2020 passed on a complaint dated 30.09.2020 by the Director General of Police, Punjab. In the said case, order was passed for not taking coercive step. Copy of order dated 11.10.2021 is Annexure P-16. Ultimately, the deficient court fee was deposited as per order dated 09.12.2021 which is Annexure P-17. With this background, the petitioners filed application under Order 7 Rule 11 CPC on 28.09.2022 taking the stand that the period of limitation expired in filing civil suit on 03.07.2011 qua the first agreement and the period of limitation expired for second agreement on 15.12.2011, whereas the suit has been filed on 06.01.2022 which is barred under Section 54 of First Division, The Schedule in The Limitation Act, 1963. Even otherwise one civil suit pertaining to two different agreements regarding the land situated in different villages is not maintainable and the suit filed by the plaintiffs seeking mandatory injunction is barred under Section 41 (h) of The Specific Relief Act, as specific efficacious remedy is available by other mode of filing of suit. The copy of application under Order 7 Rule 11 CPC is Annexure P-19 and the reply filed to this application is Annexure P-20. The petitioners have also placed on record copies of other applications and reply filed during the proceedings of the case. The learned counsel for the petitioners challenged the impugned order dated 11.01.2023 basically on

SANDEEP
2023.08.31 16:18
I attest to the accuracy and
integrity of this document

the ground that the suit filed by the plaintiffs is hopelessly barred by limitation. In-fact the period of limitation pertaining to first agreement to sell dated 21.03.2008 expired on 03.07.2011 and the period of limitation regarding second agreement to sell dated 21.03.2008 expired on 15.12.2011. It is nowhere mentioned that the period of limitation for filing the suit be extended under Section 5 of Limitation Act. The respondent Nos.1 and 2 themselves stopped payment of cheque dated 11.08.2008 as detailed in para No.2 of the plaint and the limitation had started from the said date. The period of limitation cannot be extended orally as mentioned in the plaint. On this point, he has referred to the provision of Section 18 of Limitation Act, 1963. In support of his arguments, the learned counsel for the petitioners/defendants has relied upon the authorities cited in **(2020) 7 Supreme Court Cases 366** in case titled as **"Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through LRs and Ors"** by relying upon the findings in para No.23.2 and para No.23.3 which runs as under:-

> "23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.
>
> 23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case,

SANDEEP
2023.08.31 16:18
I attest to the accuracy and
integrity of this document

it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted."

Learned counsel for the petitioners further relied upon para No. 23.11 of the aforesaid judgment where it was held that "the test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in **Liverpool & London S.P. & I Assn. Ltd. Vs. M.V. Sea Success (SCC p. 562, para 139)** which reads as under:-

> "139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

On this point, he has also relied upon another authority **2022 (4) R.C.R (Civil) 426 SCI in case titled as "C.S. Ramawamy Vs. V.K. Senthil & Ors."** as lead case wherein it was explained while dealing with the provisions of Order 7 Rule 11 CPC that the plaintiffs cannot be permitted to bring suits within a period of limitation by clever drafting, which otherwise is barred by limitation. In that case it was concluded the suit was barred by law of limitation, the respective plaints were required to be rejected in exercise of the powers under Order 7 Rule 11 CPC.

Learned counsel for the petitioners argued that even if for the sake of arguments, the facts stated in the plaint (Annexure P-9), are taken

SANDEEP
2023.08.31 16:18
I attest to the accuracy and
integrity of this document

to be as correct, even then the suit filed by the plaintiffs is barred by limitation. Without considering the settled proposition of law as well as clear provisions of Order 7 Rule 11 CPC, the application filed by the petitioners/defendants has been wrongly rejected by passing impugned order dated 11.01.2023. It is prayed that the impugned order may be set aside by accepting the present revision and the plaint filed by the respondents/plaintiffs is liable to be rejected under the provisions of Order 7 Rule 11 CPC.

3. On the other hand, learned counsel for the respondents/plaintiffs pointed out that the impugned order dated 11.01.2023, Annexure P-1, was correctly passed after appreciating the facts of the case and the legal proposition. It was rightly concluded by the trial Court that the question of period of limitation is mixed question of law and fact. Therefore, the plaint cannot be rejected summarily. There is need to frame issues and to record evidence for proper adjudication of the case. It is argued that there was no breach on the part of the respondents/plaintiffs in performing their part of agreement to sell. They were also having balance sale consideration and in-fact they had also issued a cheque dated 11.08.2008 for a sum of Rs.50 lacs drawn on Punjab National Bank, Ludhiana in favour of Mohinder Singh but the payment was stopped by him as the defendants were not having clear title in the property in dispute. After the execution of two agreements, it was found that part of land having area of 11 Kanals 16 Marlas comprised in Khasra No.15//8-9 situated in village Bonkar Dogran in the ownership of Mohinder Singh was allotted to him being inferior evacuee land to unauthorised occupants of inferior land from Kharif 1989 under the Punjab

SANDEEP
2023.08.31 16:18
I attest to the accuracy and
integrity of this document

Government Instructions Revenue Department Memo No.3/1/84-LR-III-8834, Chandigarh dated 24.12.1993 vide certificate dated 23.04.1999 and could not be transferred before the expiry of a period of 20 years from the date of allotment. In the same manner under the same provisions, the land measuring 4 Kanals comprised in Khasra No.14//4/1min, 15//11 min-12 min situated at Bonkar Dogran allotted to Manjit Singh under the aforesaid provisions and could not be transferred prior to 23.04.2019. At the time of execution of aforesaid agreement, the vendors represented that they were competent to alienate the entire land and it was free from all encumbrances. This fact was concealed from the plaintiffs and they were induced to enter into this deal to purchase the entire land. When this objection was raised, the petitioners/defendants had assured to execute the sale deed of entire land after getting necessary permission from the competent authority or after the expiry of 20 years from the date of allotment of the said land. They further made it clear that they will pay interest @ 12% p.a. on the amount already received by them. However, during this period the land was further acquired by National Highway Authority of India for 4 Lane Project of Laddowal Bye-pass Linking NH-95 with NH-1. This fact came to their knowledge in December, 2017. They told the defendants that since some part of the land was acquired and it was divided into two parts, therefore, they should return the entire amount already received by them along with interest and ultimately the suit was filed. It is pointed out that the respondents/plaintiffs have already deposited deficient court fee on their claim for recovery of entire advance amount received by the petitioners/defendants on the basis of two agreements dated 21.03.2008. Therefore, the objections raised by the

SANDEEP
2023.08.31 16:18
I attest to the accuracy and
integrity of this document

petitioners/defendants are without any basis. The learned counsel for the respondents/plaintiffs have also relied upon the authorities cited in **2008 (1) Recent Apex Judgments (R.A.J) 651 "Ramesh B. Desai and Ors. Vs. Bipin Vadilal Mehta and Ors."** and referred to para Nos.16 and 19 of the judgment which runs as under:-

> "16. It was emphasised in para 25 of the reports that the statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11 CPC. The principle is, therefore, well settled that in order to examine whether the plaint is barred by any law, as contemplated by sub-rule (d) of Order 7 Rule 11 Civil Procedure Code, the averments made in the plaint alone have to be seen and they have to be assumed to be correct. It is not permissible to look into the pleas raised in the written statement or to any piece of evidence. Applying the said principle, the plea raised by the contesting respondents that the Company Petition was barred by limitation has to be examined by looking into the averments made in the Company Petition alone and any affidavit filed in reply to the Company Petition or the contents of the affidavit filed in support of Company Application No. 113 of 1995 filed by the respondents seeking dismissal of the Company Petition cannot at all be looked into.
>
> 17. -----.
>
> 18. -----.

SANDEEP
2023.08.31 16:18
I attest to the accuracy and
integrity of this document

19. A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. A plea of limitation is a mixed question of law and fact. The question whether the words "barred by law" occurring in Order 7 Rule 11(d) Civil Procedure Code would also include the ground that it is barred by law of limitation has been recently considered by a two Judge Bench of this Court to which one of us was a member (Ashok Bhan J.) in Civil Appeal No.4539 of 2003 (Balasaria Construction Pvt. Ltd. Vs. Hanuman Seva Trust and others) decided on 8.11.2005 : 2008 (2) RCR (Civil) 698 : 2008 (3) R.A.J.8. and it was held:-

"After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) Civil Procedure Code and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. *Ex facie* in the present case on the reading of the paint it cannot be held that the suit is barred by time."

This principle would be equally applicable to a Company Petition. Therefore, unless it becomes apparent from the reading of the Company Petition that the same is barred by limitation the petition cannot be rejected under Order 7 Rule 11 (d) Civil Procedure Code."

SANDEEP
2023.08.31 16:18
I attest to the accuracy and
integrity of this document

On this point he has also relied upon another authority cited in **2021 (11) Scale 13 Supreme Court of India case titled as Salim D. Agboatwala and Ors. Vs. Shamalji Oddhavji Thakkar and Ors.** wherein it was again explained that "the rejection of plaint on the ground of limitation is concerned, it is needless to emphasis that limitation is a mixed question of fact and law and it is the case of the appellants/plaintiffs that only after making inspection of the records in connection with the suit land available in the office of defendant No.3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before the ALT were collusive, fraudulent and null and void. The appellants/plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings. The appellants/plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings. It was further explained by relying upon the authority cited in **P.V. Guru Raj Reddy Vs. P. Neeradha Reddy and Ors. (2015) 8 SCC 331** that rejection of plaint under Order 7 Rule 11 CPC is drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order 7 Rule 11." Therefore, the learned counsel for the respondents/plaintiffs argued that even if the facts stated in the plaint are considered as it is, it cannot be said that the suit filed by the plaintiffs is barred by limitation. The facts of

SANDEEP
2023.08.31 16:18
I attest to the accuracy and
integrity of this document

the case were rightly considered by the Court of Civil Judge (Jr. Divn.) while passing the impugned order dated 11.01.2023, Annexure P-1, and the application under Order 7 Rule 11 CPC was rightly rejected. It is prayed that the revision preferred by the revisionist/defendants is without merits and the same deserves dismissal.

4. I have considered the arguments advanced by learned counsel for both the parties and have gone through the plaint Annexure P-9 as well as the authorities relied upon by learned counsel for both the parties as referred above. The present civil revision has been filed against impugned order dated 11.01.2023, Annexure P-1, passed by Civil Judge (Jr. Divn.) Ludhiana vide which the application filed by the petitioners/defendants under Order 7 Rule 11 CPC has been declined. As per the case of petitioners/defendants, the suit filed by the plaintiffs for mandatory injunction and for recovery of advance money of Rs.1.50 crore from the petitioner/defendant Nos.1 to 4 on the basis of two agreements dated 21.03.2008 Annexures P-2 and P-3 as detailed in the plaint (Annexure P-9) is barred by limitation. The application has been filed under the provisions of Order 7 Rule 11 CPC which runs as under:-

> "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 under-valued, and the plaintiff on being required by the Court to so correct 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

SANDEEP
2023.08.31 16:18
I attest to the accuracy and
integrity of this document

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 to comply with the provisions 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.]

Learned counsel for the petitioners/defendants took the stand that the suit filed by the respondents/plaintiffs should have been filed within a period of 3 years as provided under Articles 54 and 55 of the Limitation Act, 1963 but the suit for recovery of earnest money pertaining to two agreements relating to two different villages has been filed on 11.01.2023 which is hopelessly barred by limitation. Therefore, the plaint is liable to be rejected straightway under the provisions of Order 7 Rule 11 CPC. This argument advanced by learned counsel for the

SANDEEP
2023.08.31 16:18
I attest to the accuracy and
integrity of this document

petitioners/defendants is opposed by learned counsel for the respondents/plaintiffs.

The facts of the case indicate that the petitioners/defendants along with Mohinder Singh represented to be owners of 74 Kanals 14 Marlas of land situated in two adjoining villages i.e. Bonkar Dogran, and Mujara Khurd, as per jamabandi for the year 2001-02 which they agreed to sell the land @ Rs.1.50 crore per killa. Therefore, there are two agreements to sell, both dated 21.03.2008 in which terms and conditions were duly incorporated. The copy of plaint is Annexure P-9 and the agreements to sell, both dated 21.03.2008, are Annexure P-2 and P-3. In both these agreements the date fixed for the execution and registration of sale deed was upto 15.12.2008. It was further clarified that the possession of the vacant land will be given at the time of execution of sale deed. The land was free from any sort of bar, charges, encumbrances and liabilities as detailed therein and it was further clarified that this land was not presented for any guarantee, bail or debt. The vendors shall be liable to get the satisfaction regarding ownership of the land. The petitioners have not disputed the aforesaid agreement to sell, Annexure P-2 and P-3 or their terms and conditions. It is the case of the petitioners that since the plaintiffs failed to perform their part of agreements to sell, the earnest money paid by the respondents/plaintiffs stood forfeited. On the other hand, the respondents/plaintiffs have taken a stand in their written statement, Annexure P-9, that the land which was in the ownership of Mohinder Singh and Manjit Singh situated in village Bonkar Dogra was allotted to them being inferior evacuee land to unauthorised occupants as per the Punjab Government Instructions and there was restriction regarding

SANDEEP
2023.08.31 16:18
I attest to the accuracy and
integrity of this document

transferring the same for a period of 20 years from the date of allotment. Therefore, even the payment of cheque of Rs.50 lacs dated 11.08.2008 in favour of Mohinder Singh was stopped. Thereafter, the respondents/plaintiffs took the stand that the petitioners did not return the advanced money as they had used the same and it was agreed that the sale deed will be executed after getting necessary permission from the competent authority or after period of expiry of 20 years by making adjustment of payment of interest on the amount already paid by them. In the plaint, it is further mentioned that during this period a part of the land was acquired by National Highway Authority of India for 4 Lane Project of Laddowal Bypass Linking NH-95 with NH-1. This fact came to their knowledge in December, 2017 and the entire land which they had agreed to purchase was divided into two parts, therefore, they requested to return the entire earnest money already received by them.

The provision under Order 7 Rule 11 CPC and the authorities relied upon by learned counsel for both the parties are to be applied to the facts of the present case. The existence of agreements to sell dated 21.03.2008 Annexures P-2 and P-3 and its terms and conditions are not disputed. There is no denial of rate of land or payment of earnest money. Impact of government restriction on the sale of some part of the land and subsequent acquisition of land to construct Laddowal Bye-pass Linking NH-95 with NH-1 has to be looked into. In the case in hand, in my opinion for the disposal of matter in controversy, it is required to be seen as to who had committed breach of the terms and conditions of the agreements to sell dated 21.03.2008 which are Annexures P-2 and P-3. It is to be further seen whether plaintiffs were to seek relief of Specific Performance of

SANDEEP
2023.08.31 16:18
I attest to the accuracy and
integrity of this document

Agreement to Sell or recovery of earnest money. It is further to be determined when actually the period of limitation started running. The matter in controversy cannot be decided summarily on the basis of recital in the agreements to sell to determine the period of limitation. It has been rightly held by the trial Court while passing the impugned order dated 11.01.2023 that in the case in hand the period of limitation is mixed question of law and fact which can be decided only after recording of evidence of both the parties.

In view of my above discussion, I do not find any reason to interfere in the impugned order dated 11.01.2023 passed by learned Civil Judge (Jr. Divn.), Ludhiana vide which the application filed by the petitioners under Order 7 Rule 11 CPC was declined.

Resultantly, the Civil Revision preferred by the petitioners/defendants is accordingly declined.

Pending applications, if any, shall also stand disposed of.

22.08.2023 **(AMARJOT BHATTI)**
snd **JUDGE**

Whether speaking/reasoned: Yes
Whether reportable: Yes

SANDEEP
2023.08.31 16:18
I attest to the accuracy and
integrity of this document