

2023:PHHC:138706

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

CR-1911-2019 (O&M)
Date of decision: 30.10.2023

Pardeep Kumar Verma

...Petitioner

Versus

Parveen Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vipul Aggarwal, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

1. Learned counsel representing the respondent has not come forward to attend the hearing. It has been noticed that after entering appearance on 19.09.2019, the learned counsel representing the respondent has not attended the hearing on 31.08.2022, 24.01.2023, 18.05.2023 and 12.10.2023.

2. The petitioner herein is the defendant in a suit for recovery at Rs.80,000/-. The suit has been filed on the ground that the defendant purchased a car from the plaintiff in the year 2010 and in order to pay the sale consideration the defendant issued various post dated cheques. A cheque amounting to Rs.20,000/- was dishonoured when it was presented to the Bank for encashment. Thereafter, when the plaintiff demanded the amount, the defendant alongwith his sons attacked the plaintiff. The plaintiff moved a complaint against the defendant and his sons under Section 107/151

Cr.P.C, which remained pending. The suit was filed in March, 2018. An application filed by the defendant, to reject the plaint on the ground that the suit has been filed beyond the prescribed period of limitation, has been dismissed by the trial court on the ground that the question of limitation is a mixed question of law and fact and it shall be decided after weighing the evidence led by the parties. The correctness of the aforesaid order has been challenged in this revision petition.

3. Learned counsel representing the petitioner while drawing the attention of the Court to para 8 of the plaint submits that even as per the case of the plaintiff, the cause of action to recover the amount arose in the year 2011 when the cheques were dishonoured. He submits that the cause of action never arose in the year 2018.

4. This Court has considered the submissions made by the learned counsel representing the petitioner. Para 8 of the plaint reads as under:-

“8. That cause of action accrued to the plaintiff against the defendant on 28.12.2010 when the defendant purchase the Car TATA Indica Car bearing Registration No.PB-10-BL-5243 and made the part payment through cheques as the vehicle in question in hypothecation with the TATA Captial Limited. The cause of action further accrued on 19.4.2011 and 7.5.2011 when the cheque bearing No.750272 dated 17.4.2011 was dishonoured due to insufficient balance and the defendant lingered on the matter by one or the other way. The cause of action further accrued on 17.05.2011 when the defendant alongwith his sons

attacked upon the plaintiff and tried to snatch the papers of the car from the plaintiff. The cause of action accrued on when the plaintiff moved a complaint against the defendant and his sons before the Police Authority, but the police has not initiate any action against the defendant and his sons, rather lodged a DDR No.7 dated 7.6.2011 under Section 107/151 Cr.P.C., P.S. Basti Jodhewal, Ludhiana. The cause of action further accrued on when the defendant appeared in the complaint filed by the plaintiff, but refused to pay the amount of the car to the plaintiff. The cause of action further accrued on each and every date when the plaintiff requested the defendant to pay the balance amount of car, and lastly on 28.2.2018 when during trial of the complaint before the Illaqa Magistrate when the plaintiff asked the defendant to pay the balance amount of car but the defendant flatly refused to do so. Thus, it is recurring cause of action.”

5. Under Order VII Rule 11 of the Code of Civil Procedure, 1908, the Civil Court has the enabling power to reject the plaint if from the reading of the plaint it becomes evident that the suit filed by the plaintiff has not been filed within the prescribed limitation period. Undisputedly, in some cases, the question of limitation is a mixed question of law and fact, however, the plaintiff is required to plead and prove the date on which the cause of action accrued. In this case, the plaintiff has alleged that the cause of action accrued on 28.12.2010. Subsequently, the cause of action accrued on 19.04.2011 and 07.05.2011. Thereafter, the cause of action accrued on 17.05.2011. Subsequently, in last portion of para 8, it has been pleaded that the plaintiff requested the defendant to pay the balance amount of sale consideration of the car

during the pendency of the complaint on 28.02.2018, which was refused. In fact, in this case, the court was required to examine the contents of the plaint carefully in order to decide the application. From the reading of the order, it is obvious that the trial court has failed to closely and carefully examine the contents of the plaint.

6. Keeping in view the aforesaid facts, the impugned order is set aside. The trial court is requested to decide the application afresh, after carefully examining the contents of the plaint.

7. With these observations, the revision petition is allowed.

8. All the pending miscellaneous applications, if any, are also disposed of.

30.10.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE