IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

141 **2023:PHHC:116836**

CR-2705-2023
Date of decision: 05.09.2023

NEHA SINGH **..Petitioner**

Versus

DURGESH KUMAR AND ANOTHER **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Kumar Jindal, Advocate
for the petitioner.

Mr. Barjinder Singh, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. This revision petition under Article 227 of the Constitution of India has been filed to quash the orders passed by the Court of first instance on 15.10.2022 and 30.09.2022 while dismissing the petitioner's application under Order VII Rule 11 of the Code of Civil Procedure, 1908 and an application for review of the order.

2. The respondent No.1 Sh. Durgesh Kumar filed a suit on 13.05.2022 for grant of decree of possession by way of specific performance of the agreement to sell dated 26.02.2016. As per the agreement to sell, the sale deed was supposed to be executed on 26.04.2016. Defendant No.2 (petitioner herein) purchased the property vide registered sale deed dated 09.05.2022 from defendant No.1 on payment of Rs.19,12,500/- as sale consideration. He filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, for rejection of the plaint, which was dismissed by the trial Court on 15.10.2022 on the ground that defendant No.1 (Smt. Sushma Devi) sent a notice to the plaintiff on 04.04.2022 and therefore, the

cause of action would arise on 19.04.2022. The application filed for review of the aforesaid order has also been dismissed.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. The learned counsel representing the petitioner contends that as per the agreement to sell, the last date for the execution of the sale deed was 26.04.2016. Therefore, this suit shall be governed by first part of the Article 54 of the Schedule attached to the Limitation Act, 1963 (hereinafter referred to as the '1963 Act'). He submits that the notice dated 04.04.2022 was sent by defendant No.1 in collusion with the plaintiff. He submits that such notice would not extend the limitation because the acknowledgment, if any, is not within the prescribed period of limitation.

5. On the other hand, the learned counsel representing the respondents submit that the plaint should not be rejected at this stage.

6. This Court has considered the submissions while analyzing the arguments of the learned counsel representing the parties.

7. As per Article 54 of the Schedule attached to the 1963 Act, the legislature has divided the time from which the limitation period will begin to run in two different parts. Under the first part, the time will begin to run from the date fixed for performance, whereas, under the second part, the time will begin to run when the plaintiff has noticed that the performance is refused. The limitation of filing of the suit for specific performance is three years. In this case, the period began to run under first part i.e. on 26.04.2016. It came to an end on 26.04.2019. The notice dated 04.04.2022 sent by

defendant No.1 was not within the prescribed period of limitation. Hence, it would not extend the limitation period.

8. Section 18 of the 1963 Act, is extracted as under:-

> *"**18. Effect of acknowledgment in writing.**— (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*
> *(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.*
> *Explanation.—For the purposes of this section,—*
> *(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,*
> *(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and*
> *(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."*

9. It is evident that the legislature has laid down that before the expiration of the prescribed period for a suit or an application in respect to any property or right, an acknowledgment has been made in writing signed by the party against whom such property or right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment was signed. As already noticed, in this case, the limitation period for filing the suit came to an end on 26.04.2019, whereas, the acknowledgment, if any,

was on 19.04.2022. However, this issue has not been examined by the trial Court.

10. Keeping in view the aforesaid facts, the impugned orders are set aside.

11. The trial Court is requested to decide the application afresh after taking note of Section 18 of the 1963 Act.

12. With these observations, the present petition is disposed of.

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

September 05th, 2023 **(ANIL KSHETARPAL)**
Ay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No