

CR-2376-2023 (O&M)

109

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2376-2023 (O&M)

Date of decision: April 21, 2023

Tarsem Pal

....Petitioner

versus

Gurvir Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Deepak Aggarwal, Advocate for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside impugned order dated 09.11.2022 passed by learned Civil Judge (Junior Division), Bathinda whereby application filed by petitioner-defendant under Order VII Rule 11 read with Section 151 of Code of Civil Procedure, 1908 (for short 'CPC') for rejecting plaint of respondent No.1-plaintiff, was dismissed.

2. The revision petition is premised on the averments that respondent No.1-plaintiff filed a suit against petitioner-defendant for mandatory injunction to deposit remaining 30 instalments of Bolero Jeep No.PB-03AJ6584 with HDFC Bank or handover possession of said Jeep to plaintiff-respondent No.1.

2.1. Petitioner-defendant moved an application (Annexure P-2) under Order VII Rule 11 read with Section 151 of CPC seeking rejection of plaint filed by respondent No.1-plaintiff on the ground that there is no cause of action in favour of respondent No.1-plaintiff to file the suit and secondly, suit is barred by time.

2.2. Vide impugned order dated 09.11.2022, learned trial Court dismissed the aforesaid application.

3. I have heard learned counsel for petitioner and perused case file.

4. Learned counsel for petitioner would contend that application of petitioner-defendant for rejecting plaint of respondent No.1-plaintiff was dismissed

CR-2376-2023 (O&M)

without considering the plea that there is no cause of action in favour of respondent No.1-plaintiff to file the suit and secondly the same is barred by principle of limitation.

5. Having heard learned counsel for petitioner, I am of the view that impugned order requires no interference.

6. Order VII Rule 11 of CPC reads thus:-

“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 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-paper 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 for correcting the valuation or supplying the requisite stamp-paper, 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.”

7. Impugned order dated 09.11.2022 passed by learned trial Court, is premised, *inter alia*, on the following reasoning:

“5. In the present application, the applicant-defendant no.1 has pleaded rejection of plaint under order VII rule 11 CPC on the ground that relief of mandatory injunction claimed by the respondent-plaintiff is time barred and it is not maintainable.

In this context, the relevant portion of the abovesaid provision is reproduced as follows:

Order VII Rule 11-Rejection of plaint: The plaint shall be rejected in the following cases: (d) Where the suit appears from the statement in the plaint to be barred by any law;

In this connection, The Hon'ble Supreme Court of India in a case titled as Saleem Bhai v. State of Maharashtra AIR 2003 SC 759 has held that

“A perusal of Order VII Rule 11 C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 C.P.C. at any stage of the suit-before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII C.P.C. the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant”

6. Under law of limitation, residuary article 113 governs the suit for mandatory injunction and period of limitation starts from the date *WHEN THE RIGHT TO SUE ACCRUES*. It can, however, be stated that right to sue accrues only when a cause of action arises and for a cause of action to arise it must be clear that the averments in a plaint, if held correct, should lead to a successful issue, where there is an accrual of the right asserted in the suit and its infringement by the defendant.

7. In the instant case, whether the present suit is barred by the law of limitation or not, is to be decided from the averments made in the plaint and if the plaint is looked at in isolation, it reveals that respondent-plaintiff has specifically pleaded cause of action arose in the favour of plaintiff when defendants flatly refused to pay the instalments or to handover the possession of the said vehicle. Moreover, it has also been specifically observed by the Hon'ble Supreme Court in a case titled as **P.V. Guru Raj Reddy vs P. Neeradha Reddy and Others 2015 (8) SCC 331** that the rejection of the plaint under Order VII Rule 11 is a drastic power conferred on the court to terminate a civil action at the threshold. Therefore, the condition precedent to the exercise of the power is stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When plaintiff claims that he gained knowledge of the essential facts giving rise to 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 VII Rule 11.

8. Cause of action, as well established, is a bundle of facts, necessary for a plaintiff to prove and get a decision in his favour. The facts, raised by the plaintiff on the point of cause of action and when it arose, are required to be proved at the stage of trial. In the instant case, question of limitation is a mixed question of fact and law and the suit does not appear to be barred by limitation on the face of it. This, being a mixed question of fact and law, is required to be proved by the parties by leading evidence. At this stage, this court cannot reach to a definite conclusion as to whether the suit filed by the plaintiff is time barred or not. The same is a disputed question of fact and consequently, a matter of trial.”

8. Having heard the arguments of learned counsel for petitioner-defendant and gone through impugned order, I am of the view that learned trial Court rightly observed that the contentions raised by the plaintiff on the point of cause of action and when it arose, are required to be proved at the stage of trial and limitation being a mixed question of fact and law, is required to be proved by the parties by leading

CR-2376-2023 (O&M)

evidence and till then trial Court cannot reach a definite conclusion as to whether the suit filed by the plaintiff is time barred or not. *Ex facie* the plaint does disclose that there is cause of action and suit is within limitation.

9. Having heard the arguments of learned counsel for the parties, there is no room for interference in the aforesaid valid reasons recorded by learned Court below.
10. No material irregularity in law or procedure has been committed by learned Court below, so as to exercise extraordinary revisional jurisdiction herein.
11. Dismissed.
12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 21, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No