

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-2799-2023

Date of Decision: 18.8.2023

Sunder Lal Mohinder Pal Saraf and another

....Petitioners

VERSUS

Varinder Kumar and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Ms. Mona Goyal, Advocate,
for the petitioners.

KARAMJIT SINGH, J.

The present civil revision petition has been filed by the petitioners/defendants No.1 and 2 to challenge order dated 30.01.2023, Annexure P-1, passed by the Court of Civil Judge (Jr.Divn.) Bathinda, whereby an application filed by the petitioners under Order 7 Rule 11 of CPC in civil suit No.CS/1332/2021 Varinder Kumar Bansal Vs. Sunder Lal Mohinder Pal Saraf and others, has been dismissed.

2. The brief facts of the case are that plaintiff/respondent No.1 Varinder Kumar Bansal has filed suit for recovery of ₹ 8,00,000/- along with interest against the petitioners and respondent No.2. In the plaint it has been averred that father of respondent No.1 namely late Amrit Lal gave a loan of ₹ 5,00,000/- to petitioner No.1 (a firm) vide cheque No.82703 dated 12.04.2010 drawn on Indian Overseas Bank and the cheque was encashed by the borrower and amount was credited on 13.04.2010. Another loan of ₹ 3,00,000/- was availed by the aforesaid firm on 27.11.2013 vide cheque No.918385 drawn on Indian Overseas Bank and the same was also credited

in the account of petitioner firm. The petitioner firm had been making payment of interest on the aforesaid loan amount and interest of ₹ 60,000/- was paid by the petitioners to respondent No.1 on 16.05.2016 after the death of father of respondent No.1 –late Amrit Lal who died on 29.08.2014. Even thereafter interest worth ₹ 48,000/- was paid on 27.05.2016. Lastly amount of ₹ 43,200/- as an interest was paid by the petitioners to respondent No.1 on 21.4.2018. That petitioner No.2-Sudhir Jain who was also inducted as a partner in the firm, made payment of interest worth ₹ 1,08,000/- vide cheque No.008552 which was issued under his signatures. However the petitioners refused to return the principal amount along with interest, accordingly, suit for recovery has been filed by respondent No.1 on 13.08.2021.

3. On service of notice petitioners put in appearance and filed an application under Order 7 Rule 11 of CPC seeking rejection of plaint on the ground that the suit is time barred and that the respondent No.1 is also to be non-suited as he failed to produce the concerned account books at the time of filing of suit as per mandatory provisions of Order 7 Rule 14 of CPC. The application was by contested by respondent No.1 and dismissed by the trial Court vide impugned order dated 30.01.2023, Annexure P-1.

4. The counsel for the petitioners while referring to the contents of the plaint (Annexure P-2), inter alia submits that the suit is clearly time barred, as the alleged loan was availed by the petitioners in year 2010 and thereafter another loan of ₹ 3,00,000/- is stated to have been availed by the petitioners on 27.11.2013 from father of respondent No.1, who died on 29.08.2014. That during his lifetime father of respondent No.1 did not file any suit. It is further contended that as per respondent No.1, the alleged

alleged to be made on 21.04.2018. The availing of the loan as well as repayment of interest is being specifically denied by the petitioners. The plaint is not supported by any document showing that the petitioners ever acknowledged their liability in writing with regard to loan in question at any point of time. It is further submitted that the alleged loan is of year 2010/2013, whereas the suit is filed after expiry of period of limitation of three years and on this sole ground the plaint deserves to be rejected as per the provisions of Order 7 Rule 11(d) of CPC. In support of her contention the counsel for the petitioners has placed reliance upon the decisions given by the Hon'ble Apex Court in **Dahiben v. Arvind Bhai Kalyan Ji Bhanusali (Gajra) (D) through LR and others** 2020(3) RCR (Civil) 98, **Raghwendra Sharan Singh v. Ram Prasanna Singh (D) through LR** 2019(2) RCR (Civil) 596 and **Khatri Hotels Pvt. Ltd and another v. Union of India and another** 2012(1) RCR (Civil) 676.

5. I have considered the submissions made by the counsel for the petitioner.

6. It is settled law that the power under Order 7 Rule 11 of CPC can be exercised by the Court at any stage of the suit and the plaint can be rejected under Order 7 Rule 11 of CPC, if conditions enumerated in said provision are fulfilled and if on an entire reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the Court should exercise power under Order 7 Rule 11 CPC as has been held by the Hon'ble Apex Court in **Madanuri Sri Rama Chandra Murthy v. Syed Jalal** 2017(3) RCR (Civil) 64.

7. It is also settled position of law that a suit filed beyond period of limitation has to be dismissed even if issue of limitation has not been set-

up as a defence by the defendant. It is also fairly well settled that so far as the issue of limitation is concerned, it is mixed question of fact and law. Equally it is well settled that for purpose of deciding application filed under Order 7 Rule 11 CPC only averments stated in the plaint alone can be looked into and merits and demerits of the matter and allegations by the parties cannot be gone into. At the same time, the Court should not be oblivious of the fact that remedy under Order 7 Rule 11 CPC is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold without proceeding to record evidence if it is satisfied that the action should be terminated on any of the grounds contained in this provision. Hon'ble Supreme Court in **Azhar Hussain v. Rajiv Gandhi**, 1986 Supp. SCC 315 has held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless and bound to prove abortive, should not be permitted to waste judicial time of the Court. Hon'ble Supreme Court in **Raghwendra Sharan Singh's** case (supra) while invoking the provisions under Order 7 Rule 11 CPC, rejected the plaint on the ground that the suit filed by the plaintiff was barred by limitation. So, the application filed by the defendant under Order 7 Rule 11 CPC cannot be disposed of merely by observing that issue of limitation involves mixed question of fact and law.

8. It is the pleaded case of respondent No.1 that at the first instance loan worth ₹ 5,00,000/- was availed by the petitioners from father of respondent No.1 on 12.04.2010 through a cheque which was encashed on 13.04.2010. Thereafter, no transaction between the parties has been pleaded in the plaint and the next transaction whereby another loan is stated to have been taken by the petitioners is dated 27.09.2013. Apparently, the said

acknowledgment cannot be taken into consideration as per provisions of Section 18 of Limitation Act, as the same was made after expiry of period of limitation of three years from the date of first loan i.e. 12/13.04.2010 and this aspect was not taken into consideration by the trial Court while passing the impugned order. Further the trial Court has not taken into consideration, another plea raised by respondent No.1 with regard to non-compliance of Order 7 Rule 14 CPC relating to production of documents on which respondent No.1 has placed reliance.

9. In light of the above, this Court is of the view that the impugned order is not sustainable in the eyes of law and deserves to be set aside.

10. For the foregoing reasons, the present petition is allowed and the impugned order is set aside and the trial Court is directed to re-look into the matter and pass a fresh order in accordance with law. The petitioners are directed to appear before the trial Court on the date already fixed there.

11. However, it is made clear that the observations made hereinabove are only for the purpose of disposal of present petition, and are not to be considered as expression of opinion on the merits of the case.

(KARAMJIT SINGH)
JUDGE

August 18, 2023
Paritosh Kumar

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