

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

Civil Revision No. 6719 of 2023(O&M)

Date of Decision: 08.11.2023

Alliance JMR Land Projects Pvt. Ltd.

...Petitioner

Versus

Gyanender & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. A.P.S. Sandhu, Advocate with
Mr. G.S. Saggi and
Mr. Ashish Kaushik, Advocate
for the petitioner.**

KARAMJIT SINGH, J.

1. The present civil revision petition has been filed by the petitioner/ defendant seeking setting aside of order dated 10.10.2023 (Annexure P-4) passed by the Court of Civil Judge (Jr.Divn.), Faridabad whereby an application filed by the petitioner under Order 7 Rule 11 CPC has been dismissed in civil suit titled Gyanender Vs. Alliance JMR Land Projects Private Limited.

2. The brief facts of the case are that respondent No.1 has filed suit for declaration to the effect that sale deed dated 07.06.2013 executed by the respondent No.1 in favour of the petitioner is null and void on the ground that major portion of the sale consideration was received by respondent No.1 from the petitioner through cheques and one of the said cheques bearing No. 605075 dated 29.03.2014 worth Rs.42,13,125/- was dishonoured on its presentation vide memo dated 31.03.2014.

3. Notice of the suit was issued to the petitioner, on which the petitioner filed an application under Order 7 Rule 11 CPC seeking rejection of the plaint on the ground that the suit filed by respondent No.1 dated

11.04.2018 in order to challenge the execution of the sale deed dated 07.06.2013 is clearly time barred and even otherwise the suit filed by respondent No.1 is not maintainable in the present form and the only remedy available with the said respondent is to file suit for recovery of the cheque amount in question. The said application was contested by respondent No.1 and was dismissed by the trial Court vide impugned order (Annexure P-4).

4. The counsel for the petitioner while referring to the pleadings made in the plaint (Annexure P-1), *inter alia*, contends that the suit filed by respondent No.1 is hopelessly time barred as the alleged sale deed was executed on 07.06.2013 and as per petitioner the cheque on its presentation was dis-honoured vide memo dated 31.03.2014 and even if the notice period as provided under Section 138 of Negotiable Instruments Act is to be taken into consideration, the suit filed by respondent No.1 dated 11.04.2018 is clearly time barred being filed after expiry of period of limitation of three years and on this sole ground the plaint deserves to be rejected. In support of his contentions, the counsel for the petitioner has placed reliance upon **Dahiben Vs. Arvind Bhai Kalyan Ji Bhanusali (Gajra)(D) through LRs and others 2020(3) RCR(Civil) 98, Raghwendra Sharan Singh Vs. Ram Prasanna Singh (D) through LR 2019(2) RCR(Civil) 596 and Khatri Hotels Pvt. Ltd. & Anr. Vs. Union of India & Anr. 2012(1) RCR (Civil) 676.**

5. The counsel for the petitioner further submits that even otherwise the suit filed by respondent No.1 seeking declaration that the sale deed in question is null and void is not maintainable and in case there is deficiency in the payment of sale consideration made by the petitioner, the only remedy available with respondent No.1 is to file suit for recovery of the

same.

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

7. It is settled position of law that power under Order 7 Rule 11 CPC could be exercised by the Court at any stage of the suit and the plaint is to be rejected if conditions enumerated in said statutory provision are fulfilled and if on entire reading of plaint, it is found that the suit is manifestly frivolous and is not disclosing any right to sue, the Court should invoke its jurisdiction under Order 7 Rule 11 CPC. In this regard, reference is made to **Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal, 2017(3) RCR (Civil) 64.**

8. It is settled position of law that for purpose of deciding application under Order 7 Rule 11 CPC only averments stated in the plaint are to be examined and merits and demerits of the matter cannot be gone into. However, the Court has to keep in its mind 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 further to record the evidence, if it is satisfied that the suit is covered under the conditions provided under Order 7 Rule 11 CPC. It is also fairly settled that so far as the issue of limitation is concerned, it is mixed question of fact and law. However, the Hon'ble Supreme Court in **Raghwendra Sharan Singh's** case (supra) while invoking the provisions of Order 7 Rule 11 CPC rejected the plaint on the ground that suit filed by plaintiff was time barred. So, the application filed by petitioner under Order 7 Rule 11 CPC could not have been disposed of by the trial Court merely by observing that issue of limitation involves mixed question of fact and law.

9. It is pleaded case of respondent No.1 that sale deed in question was executed and registered on 07.06.2013 by him in favour of the petitioner

for Rs.56,17,500/- out of which Rs.20,000/- were paid in cash, Rs.11,23,500/- by way of cheque dated 27.05.2013, Rs.2,60,875/- also by way of cheque dated 03.06.2013 and Rs.42,13,125/- by way of another cheque dated 29.03.2014 and that the last cheque of Rs.42,13,125/- was dishonoured vide memo dated 31.03.2014, on its presentation while the suit was filed by respondent No.1 on 11.04.2018, but 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 with regard to maintainability of the suit for declaration filed in the present form by respondent No.1.

10. In light of the above, the impugned order being not passed in conformity with the provisions of law, deserves to be set aside.

11. For the foregoing reasons, the present petition is allowed and the impugned order is set aside and the trial Court is directed to relook into the matter and pass a fresh order in accordance with law. The petitioner is directed to appear before the trial Court on the date already fixed in the suit.

12. 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 construed as expression of opinion on the merits of the case.

13. Keeping in view the nature of order being passed, no notice is required to be issued to the respondents. However, if they feel dis-satisfied with this order, they may move an application to recall the same.

08.11.2023

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(KARAMJIT SINGH)
JUDGE

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