

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.124

Case No. : C. R. No. 7306 of 2023

Date of Decision : December 05, 2023

Tejpal

.... Petitioner

vs.

Satpal

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Ms. Savita Devi, Advocate
for the petitioner.

* * *

GURBIR SINGH, J. :

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 03.11.2023 (Annexure P-1), passed by learned Additional District Judge, Jind (hereinafter referred to as – the Lower Appellate Court) and also to the order dated 17.02.2023 (Annexure P-8), passed by learned Additional Civil Judge (Senior Division), Safidon (hereinafter referred to as – the Trial Court), whereby application filed by the petitioner/defendant under Order 7 Rule 11 CPC has been dismissed.

2. Brief facts of the case in hand, as culled out from the paper-book, are that respondent/plaintiff filed suit against the petitioner/defendant for recovery of Rs.32,50,000/- on the ground that the petitioner/defendant borrowed Rs.12,50,000/- from the plaintiff on 01.05.2016 and also a sum of Rs.20,00,000/- on 15.01.2017, by making a writing in his own hand in the

bahi of respondent/plaintiff. However, later on, the respondent/plaintiff failed to produce the original *bahi* to show the entries in the hand of defendant/petitioner and therefore, the defendant/petitioner filed application under Order 7 Rule 11 CPC for rejection of plaint, which has been dismissed by the Trial Court as well as the Lower Appellate Court.

3. Learned counsel for the petitioner/defendant has submitted that respondent/plaintiff failed to show the payment of interest from 01.05.2016 to 15.01.2017. The suit has been filed beyond limitation. The plaintiff/respondent had no cause of action to file the suit qua confirmation of total borrowed amount of Rs.32,50,000/- on dated 15.01.2017. The plaintiff/respondent has not stated the precise amount of the claim as per Clause (ix) of Sr. No.1 of Part-C of Chapter 1 of High Court Rules and Orders. The plaintiff, by cleverly drafting the plaint, has wrongly taken the plea of confirmation of balance in *bahi*, whereas no such writing is there in existence. Therefore, suit of the plaintiff/respondent was liable to be rejected.

4. Learned counsel for the petitioner/respondent has further argued that an application dated 04.05.2022 was moved asking the plaintiff/respondent to produce the original *bahi*. Initially, stand of the plaintiff/respondent in the suit was that a copy of *bahi* entry was annexed and original *bahi* was in his possession but when application was moved for production of original *bahi*, then counsel for the plaintiff/respondent took stand in the Trial Court that the plaintiff was not having any *bahi* entry dated 15.01.2017, where the defendant had specifically confirmed the liability of

Rs.32,50,000/- although there is one entry dated 15.01.2017, a copy of which has already been appended with the plaint. It has thus been contended that the suit is time barred and barred by limitation. Reliance in support of the contentions has been placed on a judgment of Hon'ble Supreme Court in case **Ramisetty Venkatanna and another vs. Nasyam Jamal Saheb and others** – **Civil Appeal No.2717 of 2023**.

5. I have heard submissions made by learned counsel for the petitioner and perused the case file.

6. Order 7 Rule 11 CPC reads as under :-

“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 under-valued, and the plaintiff, on being required by the Court to so 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 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-papers 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 from correcting the valuation or supplying the requisite stamp-papers, 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. It is well settled that at the time of disposing of an application under Order 7 Rule 11 CPC, only averments in the plaint are to be seen and plaint is liable to be rejected as a whole and not partly. The plaintiff has filed the suit for recovery of Rs.32,50,000/-, on which court fee of Rs.1,45,000/- has been paid. The suit was filed on 13.01.2020. Para nos.4 and 5 of the plaint are as under :-

“4. That the defendant was in need of money for his profession of property dealing, in election of Sarpanch and for construction of his house, so the defendant borrowed an amount of Rs.12,50,000/- in cash on interest @ 2% per month from the plaintiff on dated 01.05.2016 and the defendant made an entry in his own hand in this regard in token of payment received by him, in the Bahi of plaintiff.

5. That thereafter on dated 15.01.2017, after understanding the account, the defendant

paid the interest from 01.05.2016 to 15.01.2017 of above said amount of Rs.12,50,000/- to the plaintiff and also borrowed Rs.20,00,000/- more, in cash @ 2% per month after confirmation of balance of Rs.32,50,000/- i.e. amount borrowed on 01.05.2016 and 15.01.2017 respectively. It is pertinent to mention here that the defendant had borrowed money several times from the plaintiff from 04.10.2012 till 15.01.2017 and all the writing in token of receipt is in the hand of defendant, in the bahi of the plaintiff and defendant had paid the remaining amount from time to time prior to 01.05.2016.”

8. As per version in the plaint, the defendant/petitioner also borrowed a sum of Rs.20,00,000/- on 15.01.2017. So, it cannot be said that the entire suit is barred by limitation. The suit is not prima facie barred by limitation and cause of action has prima facie accrued in favour of plaintiff to file the suit. The case of Ramisetty Venkatanna (*supra*) is distinguishable on facts and is of no help to the petitioner. It is a question of evidence whether the defendant signed the original *bahi* or not and petitioner would definitely get opportunity to rebut the evidence to be produced by plaintiff. Since prima facie suit is within limitation with regard to part of the claim and plaint disclosed the cause of action, so, plaint cannot be rejected.

9. The Courts below have rightly held so that the plaint cannot be rejected. I find no error in the orders passed by the Courts below.

Accordingly, the present revision petition is without any merit and the same

is, therefore, dismissed.

10. Pending applications, if any, shall stand disposed of along with this judgment.

December 05, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.