



116 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-464-2019 (O&M)

Date of decision: 07.05.2024

Ravinder and another

...Petitioners

Versus

Harish Rishi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Lokesh Sinhal and
Mr. Sukhandeep Singh Advocate for the petitioners
(through Video Conferencing)

Mr.Ashok Bhardwaj, Advocate for respondent no.1 and 2

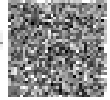
ANIL KSHETARPAL, J (Oral)

1. Through this revision petition, the defendant assails the correctness of the interlocutory order passed by the trial court while dismissing his application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') with a prayer to reject the plaint at the threshold on the ground that it has been filed beyond the period prescribed under the Limitation Act, 1963.

2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

3. On 06/12/2013 the plaintiff (respondent herein) filed a suit for specific performance of the contract with a consequential relief of permanent injunction. In para 18 the plaintiff has asserted as under:-

"18. That the cause of action to file the present suit each and every day when the plaintiff requested the defendants Nos.1 & 2 to get executed the sale deed, and also when the 08.12.2003 when the plaintiff made the payment to the defendants Nos. 1 &



2 and also when the plaintiffs to avoid the litigations also send the legal notice through Mr. Pankaj Singh Advocate, on dated 31.01.2014 but the defendant failed to execute the sale deed and also failed to given the proper reply to the legal notice till date. And finally on 30.11.2016 when they have totally refused to execute the sale deed on 30.11.2016 and also threaten to sell the said suit property to other persons having high approaches and this the final date when the cause of action has arises.”

4. The agreement to sell in this case was entered into on 27.01.2012 and the parties agreed to execute and register the sale deed on 26.04.2012. Subsequently, there was further payment of Rs.34,00,000/- and receipt dated 08.12.2013 was executed by the defendant which is thumb marked and signed by the defendant in the presence of two marginal witnesses. The trial court refused to reject the plaint of the suit on the ground that question of limitation, in the facts and circumstances of the present case, is a mixed question of law and fact, which should be decided after the parties have been permitted to lead evidence.

5. Sh.Lokesh Sinhal, learned counsel representing the petitioners has made the following two submissions:-

i) the receipt dated 08.12.2013 does not refer to agreement to sell dated 27.01.2012 and it is forged.

ii) in the plaint, the plaintiff has not asserted or averred that there was any renewal of contract.

6. In support of his submissions, he relies upon the following four judgments:-



i) Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra)

Dead through legal representatives and others (2020) 7 SCC 366;

ii) Raghwendra Sharan Singh vs. Ram Prasanna Singh

(Dead) by legal representatives (2020) 16 SCC 601;

iii) C.S. Ramaswamy vs. V.K. Senthil and others 2022

SCC Online SC 1330

iv) Ramisetty Venkatanna and another vs. Nasyam

Jamal Saheb and others 2023 SCC Online SC 521.

7. Per contra, the learned counsel representing the respondents submits that at the time of deciding an application under Order VII Rule 11 CPC, only the assertions made in the plaint are required to be seen. He submits that the plaintiff has disclosed the cause of action in para 18 which has already been extracted.

8. This Court has considered the submissions made by the learned counsel representing the parties.

9. The enabling power to reject the plaint is drastic and is required to be exercised only if the court is definite that the suit is liable to be dismissed on the basis of the averments made in the plaint. Out of the grounds enlisted under Order VII Rule 11, one of the grounds on which the plaint can be rejected is when the court comes to a conclusion that the suit, appears from the statement in the plaint, to be barred by any law. In this case, the receipt dated 08.12.2013 has been allegedly executed by the defendant in favour of the plaintiffs. The suit land in the receipt as well as in the agreement to sell is common. In the receipt, it is stated that the amount of Rs.34,00,000/- has been received as earnest



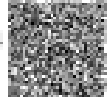
money. The receipt is in continuation of the previous writing i.e the agreement to sell. Hence, there is novation of the contract between the parties, once a subsequent contract has been allegedly signed by the defendant.

10. With reference to the second submission, it will be noted that as per Order VI Rule 2 CPC the pleadings are required to be confined to the facts and that also in a summary manner. The evidence is not required to be made part of the pleadings.

11. At this stage, it will not be appropriate for the court to reject the plaint only because in the Muffasil courts the plaint has been drafted without advertng to the technicalities of law.

12. As far as the judgment cited by the learned counsel representing the petitioner, it can be noticed that in **Dahiben's case (supra)**, the Supreme Court laid down the parameters which are required to be followed while exercising powers under Order VII Rule 11 CPC. In para 23.5 it has been held that the power conferred upon the court to terminate a civil action is drastic one and the conditions enunciated under Order VII Rule 11 are required to be strictly adhered to.

13. In **Raghwendra Sharan Singh's case (supra)**, the Supreme Court again interpreted Order VII Rule 11 CPC. In certain cases, the question with respect to the limitation may be a pure question of law, however, in majority of civil cases, it is a mixed question of law and facts, which should be decided only after the parties lead their evidence.



14. Similarly, the judgment passed in **C.S.Ramaswamy's case (supra)** is again on interpretation of the scope of Order VII Rule 11 CPC. In **Ramisetty Venkatanna's case (supra)**, the Supreme Court was examining the issue with regard to rejection of plaint in the context of suit for declaration.

15. With highest respect the judgments relied upon by the learned counsel representing the petitioners are not supporting his arguments.

16. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

17. Hence, dismissed.

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

07.05.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE