

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

CR-6710-2018 (O&M)

Reserved on : 02.04.2024

Pronounced on : 29.04.2024

PREM KUMAR

....Petitioner

VERSUS

CHARANJIT SINGH AND OTHERS

...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Prashant Bansal, Advocate for the petitioner.

Mr. Chetan Kapoor, Advocate for the respondent No.1.

ALKA SARIN, J.

1. The present revision petition has been filed by the defendant challenging the impugned order dated 30.07.2018 whereby the application filed by him under Order 7 Rule 11 CPC for rejection of the plaint has been dismissed.

2. Learned counsel for the defendant-petitioner would contend that the suit filed by the plaintiff-respondent No.1 is for recovery on account of malicious prosecution. The defendant-petitioner herein moved an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the limitation for filing a suit for compensation for malicious prosecution is within one year of the date of acquittal or the prosecution is otherwise terminated. It was averred that the order of acquittal was passed on 07.08.2015 while the suit was filed on 30.11.2016 and was therefore time barred. Learned counsel would further contend that the Bombay High Court has held in the case of **Bhaskar Narhar Deshmukh vs. Kisanlal**

Sadasukhdas & Anr. [AIR 1968 Bombay 21] that the limitation would start from the date of acquittal by the trial court itself.

3. *Per contra*, learned counsel for the plaintiff-respondent No.1 has relied upon the judgement of the Division Bench of the Jammu and Kashmir High Court in **Krishan Gupta & Ors. vs. D.D. Sadhotra & Ors. [AIR 2014 J&K 81]** and a Bench of the Madhya Pradesh High Court in **S. D. Tiwari vs. Gurmeet Singh alias Billo & Anr. [2009 (2) RCR Criminal 621]** to contend that the period of one year would commence from the dismissal of the appeal against acquittal.

4. I have heard the learned counsel for the parties.

5. The only ground on which the application under Order 7 rule 11 CPC was pressed was that the suit itself was barred by limitation. It is trite that while deciding an application under Order 7 Rule 11 CPC only the contents of the plaint along with any document filed with the plaint are to be seen. Neither the written statement nor the averments made in the application can be considered for rejection of the plaint under Order 7 Rule 11 CPC. While exercising the powers under Order 7 Rule 11 CPC, the Court has to determine as to whether a case for rejecting the plaint at the very threshold is made out. On a meaningful reading of the plaint if it is found that the same is vexatious or is clearly barred by limitation, the Court would exercise its powers under Order 7 Rule 11 CPC. The Hon'ble Supreme Court in the case of **Salim D. Agboatwala vs. Shamalji Oddhavji Thakkar [(2021) 17 SCC 100]** has held as under :

“8. Insofar as the rejection of the plaint on the ground of limitation is concerned, it is needless to emphasise that limitation is a mixed question of fact and law. It is

the case of the appellant-plaintiffs that only after making inspection of the records in connection with the suit land available in the office of Defendant 3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before ALT were collusive, fraudulent and null and void. The appellant-plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.”

6. In the case of **Chotanben and another vs Kiritbhai Jalkrushnabhai Thakkar [2018 (5) RCR (Civil) 163]** the Hon’ble Supreme Court held as under :

“12. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge

whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.”

7. Further, in the case of **Urvashiben & anr. vs Krishnakant Manuprasad Trivedi [2019 (1) RCR (Civil) 366]** it has been held as under:

“15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. 14 (2009) 5 SCC 462 15 (2006) 5 SCC 658 C.A.@ SLP(C)Nos.23062-63/18 Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC.”

8. In the present case the question to be determined is whether the limitation began from the date of acquittal by the Trial Court or from the date of decision by the Appellate Court. The learned counsel for the defendant-petitioner has contended that the plaint itself only states that the cause of action arose only when the defendant-petitioner refused to accept the genuine request of the plaintiff-respondent No.1. It would be a matter of evidence as to whether the suit is within limitation or not. On a plain reading

of the plaint it cannot be inferred or adduced that the suit is barred by limitation. The plaintiff-respondent No.1 has mentioned in para 4 of the plaint that the appeal against his acquittal was dismissed on 02.12.2015. On the face of it, the averments made in the plaint make out a case within limitation against the defendant-petitioner. However, exercise of powers under Order 7 Rule 11 CPC are drastic ones and a duty is cast on the Court to determine as to whether the plaint, on a plain reading along with document annexed thereto, discloses a cause of action. No other document is to be seen at this stage. Keeping in view the law laid down that the question of limitation would be a mix question of law and fact, the same cannot be decided in an application under Order 7 Rule 11 CPC. Since the question of limitation has not been kept open by the Trial Court while deciding the application under Order 7 Rule 11 CPC, the order of the Trial Court is set aside to the limited extent that the question of limitation would be kept open to be decided on an issue to be framed qua the same. The question of limitation would then be decided on the basis of the pleadings and the evidence led by the parties.

9. The present petition is disposed off accordingly. Pending miscellaneous applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

29.04.2024

Ankur

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*