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

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Date of Decision: 13.03.2024.

Punjab State Power Corporation Limited, Patiala and another
...Petitioners.

Versus

Nachattar Singh
....Respondent.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Ms. Monica Chhibber Sharma, Advocate with
Ms. Priyanka Goyal, Advocate
for the petitioners.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioners have challenged order dated 27.10.2023 (Annexure P-5) passed by learned trial Court, vide which application filed by the petitioners/defendants under Order 7 Rule 11 read with Section 151 of CPC was dismissed.

2. The brief facts relevant for the adjudication of the present revision petition are that the respondent/plaintiff filed a suit for declaration and mandatory injunction thereby asserting that work charge services rendered by the respondent/plaintiff w.e.f. 01.12.1979 to 09.07.1986 with petitioner/PSPCL may be treated as qualifying service for the purpose of pension and pensionary benefits. The respondent/plaintiff sought relief of declaration to the effect that petitioner corporation is not making full

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payment of pension, commuted value of pension, gratuity to respondent/plaintiff due to non counting of his work charge service and sought declaration that illegal recovery of the amount of Rs.1,01,983/- from the pensionary benefits of the respondent/plaintiff and not making full payment of gratuity/pensionary benefits to him due to effecting illegal recovery from the gratuity of the plaintiff and for not making payment of interest on delayed payment of pension, commuted value of pension, gratuity, leave encashment, GPF etc. to the plaintiff as have been partly paid to the plaintiff, are illegal, null and void, against the provisions of rules and regulations of the defendant department and settled law on the subject.

3. Notice of the said suit was issued and petitioners/ defendants appeared in the said suit and filed written statement and simultaneously moved an application under Order VII Rule 11 read with Section 151 CPC for rejection of the plaint.

4. The plaintiff/ respondent contested the aforesaid application and filed the reply. Vide impugned order dated 27.10.2023, the aforesaid application filed by the petitioners/ defendants corporation under Order VII Rule 11 CPC was dismissed by Civil Judge (Jr. Division), Patiala. Hence, the petitioners knocked the doors of this Court by way of filing the present revision petition.

5. Learned counsel for the petitioners has contended that the trial Court has failed to appreciate the fact that the petitioners/ defendants in their written statement had raised the preliminary objection with regard to the maintainability of the suit being barred by limitation, as the same has

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been filed on 02.08.2022 i.e. after 10-11 years of the retirement of the plaintiff i.e. 31.01.2012, even the gratuity payment order and pension payment order were issued on 11.07.2012 and since then the plaintiff/respondent has been regularly getting his pension. He has further contended that the plaintiff never raised any claim or representation to the authorities with regard to the same, so the cause of action once barred could not be revived. He has vehemently argued that where ex-facie the plaint is hopelessly time barred then the Court is well within its power to warrant interference or the Court could have proceeded by treating the issue of limitation as a preliminary issue which has not been done by the learned trial Court. He has submitted that the trial Court has failed to appreciate that the real object is to ensure to keep out of Courts such litigation which is abuse of process of the Court and is bogus irresponsible litigation. In support of his contentions, learned counsel for the petitioners has relied upon the judgment of Hon'ble Supreme Court in **Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) (D) Thr. Lrs and others, 2020 (7) SCC 366;** **C.S. Ramaswamy Vs. V.K. Senthil and others, 2022** civil Appeal No.500 of 2022 decided on 30.09.2022 and **Ramisetty Venkatanna and another Vs. Nasyam Jamal Saheb and others, 2023 (2) Apex Court Judgments (SC) 444.**

6. I have heard learned counsel for the petitioners and have gone through the relevant record.

7. The application under Order VII Rule 11 CPC has been filed by the petitioners/ defendants primarily on the ground that the suit of the plaintiff is barred by limitation and he has no cause of action to file the

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present suit. The trial Court has rightly held that the suit of the plaintiff cannot be dismissed at the threshold, because question of limitation and without any cause of action, are mixed questions of fact and law which require evidence for the proper and effective adjudication. "Cause of action" consists of bundle of material facts, which are necessary for plaintiff to prove in order to entitle him to relief claimed in suit. Otherwise also, it has been alleged in the plaint that the cause of action was recurring one and arose on every month from the date of retirement, when the plaintiff is being paid lesser pension than his entitlement and there is no limitation for claiming the pension and pensionary benefits. It has also been alleged in the plaint that various representations were given to the department by the plaintiff/ respondent but of no avail and legal notice dated 16.07.2022 was also served upon the petitioners department to count work charge period of service of the plaintiff and to refund the amount of Rs.1,01,983/- illegally recovered from the gratuity/ pensionary benefits to the plaintiff, but of no effect.

8. The aforesaid case law cited by learned counsel for the petitioners is not applicable to the facts of the case in hand as these cases have their own peculiar facts. The trial Court has rightly relied upon the judgment of Hon'ble Supreme Court in **Salim D. Agbotwala and others Vs. Shamalji Oddhavji Thakkar and others, 2021(4) CCC, 323**, wherein it has been held that since limitation is a mixed question of fact and law and therefore, answer to issue regarding limitation, depends upon evidence.

9. Thus, there being no illegality or infirmity in the impugned

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order no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

10. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

13.03.2024.
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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No