

CR-2035-2024 (O&M)

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

132

CR-2035-2024 (O&M)
Date of decision: 28.05.2024

Sukhvinder Kaur

...Petitioner.

Versus

Tajinder Kaur and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Mohan Singh Chauhan, Advocate
for the petitioner.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged order dated 05.01.2024 (Annexure P3), passed by the trial Court, vide which application filed by the petitioner under Order 7 Rule 11 CPC for rejection of plaint, was dismissed .

2. The brief facts relevant for adjudication of the present revision petition are that the respondent/ plaintiff filed a suit for recovery of Rs.1,19,741/- i.e. Rs.99,941/- as principal amount and Rs.20,000/- on account of interest @ 2% per annum alongwith further interest @ 2% per annum, from the date of suit till realization, with the averments that on 18.07.2007, the husband of the plaintiff/ respondent gave Rs.99,741/- to the petitioner/ defendant for purchasing land in Jalandhar, who is an

CR-2035-2024 (O&M)

- 2-

agriculturist and close relative of her husband. Husband of the plaintiff/ respondent was murdered in Jalandhar. It was alleged that few months back when the respondent/ plaintiff was cleaning the drawer she found some receipt of Western Union Payment receipt, from which she came to know that her husband had made the payment of Rs.99,741/- on 18.07.2007 to the petitioner/ defendant.

3. The petitioner/ respondent filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the suit is time barred. The said application was dismissed by the trial Court vide the impugned order dated 05.01.2024. Hence, the petitioner has knocked the doors of this Court by way of filing the present revision petition.

4. Learned counsel for the revision petitioner has contended that it has not been appreciated by the trial Court that the respondent/ plaintiff had the knowledge that the said money had been given by her husband for purchasing the land as her husband might have told her about this fact. The suit is barred by limitation, even if the husband of the respondent/plaintiff would have disclosed about it on the last day of his death i.e. 28.09.2009. This fact has also been concealed by the respondent/ plaintiff that the petitioner/defendant is real sister of the plaintiff/ respondent. He has contended that it has not been disclosed that what was the date of knowledge, when she came to know that the said amount had been given by her husband to the defendant/respondent. He has also argued that the relationship of creditor and debtor is also missing in the present suit and during his lifetime there was no demand of refund by husband of the

CR-2035-2024 (O&M)

- 3-

plaintiff/ respondent.

5. I have heard learned counsel for the petitioner and have gone through the relevant record.

6. As per the plaintiff the cause of action arose on 25.08.2019, when the plaintiff found the Western Union payment receipt allegedly made by her husband on 18.07.2007 in favour of the defendant. The limitation for filing a recovery suit is for three years from the date of accrual of cause of action. In the instant case, in order to ascertain as to when the cause of action had accrued to the plaintiff, evidence is required to be adduced by both the parties, before reaching at some conclusion by the Court. So the trial Court had rightly held that limitation is a mixed question of law and fact. In the recovery suit, cause of action would accrue to a party, when the demand was made and refused by the party from whom the amount was alleged to be outstanding. So, it is a mixed question of law that when the cause of action accrued, whether in the year 2007, when amount was allegedly given or in the year 2019 when the alleged demand was made. The trial Court has rightly placed reliance upon *M/s Unissi (india) Pvt. Ltd. Vs. Postgraduate Institute of Medical Education & Research (Punjab and Haryana) in 2021(4) PLR 641*, wherein this Court has held that a plaint cannot be rejected on the ground of limitation, as the same is a mixed question of law and fact. In the instant case also, the case of the plaintiff cannot be thrown at the very threshold on the ground of limitation, when the cogent evidence regarding it, is yet to be adduced.

7. There is no illegality or infirmity in the impugned order and no

CR-2035-2024 (O&M)

- 4-

interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

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

(SUKHVINDER KAUR)
JUDGE

28.05.2024.
komal

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