IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

230 **CR-2034-2021 (O&M)**
Date of Decision : 04.03.2024

ACHINT BAWEJA & ANR. .... Petitioners

VERSUS

SURJIT SINGH & ANR. .... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. J.S. Lalli, Advocate for the petitioners.

Mr. Sauman S. Gill, Advocate for
Mr. M.S. Batth, Advocate respondent No.1.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed challenging the order dated 18.08.2021 (Annexure P-4) passed by the learned Additional Civil Judge (Senior Division), Ludhiana vide which the application filed by the defendant-petitioners under Order 7 Rule 11 CPC was dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for recovery of Rs.20,00,000/- (rupees twenty lakhs) taken as a loan by Baljit Singh (since deceased) proprietor of Baljit Singh and Company along with interest @ 12% per annum. An application under Order 7 Rule 11 CPC was filed for rejection of the plaint on the ground that the suit was barred by limitation. A written reply was filed to the said application. Vide impugned order dated 18.08.2021 the application filed under Order 7 Rule 11 CPC was dismissed. Aggrieved by the same, the present revision petition has been filed by the defendant-petitioners.

3. Learned counsel for the defendant-petitioners would contend that Section 18 of the Limitation Act, 1963 contemplates that before the expiration of the prescribed period for a suit, if there is an acknowledgment of liability in writing then the period stands extended. It is further the contention that in the present case the loans were taken in the year 2013 and 2016 and hence the suit filed in 2020 was barred by limitation.

4. *Per contra*, learned counsel for the plaintiff-respondent would contend that whether the suit is barred by limitation or not is not made out from a meaningful reading of the plaint and that it would be a matter of evidence as to whether the suit was barred by limitation.

5. Heard.

6. In the present case, as per the plaint, there were four loan amounts which were given to Baljit Singh. One was given on 08.11.2013 to the tune of Rs.5,00,000/-; second was given on 09.12.2013 to the tune of Rs.5,00,000/-; third was given on 05.01.2016 to the tune of Rs.5,00,000/- and the fourth was extended on 23.09.2016 to the tune of Rs.6,00,000/-. On the plaintiff-respondent demanding the loan amounts, three cheques were issued on 12.06.2020 for the value of Rs.5,00,000/-; Rs.10,00,000/- and Rs.5,00,000/- respectively. However, the said cheques were not deposited and unfortunately Baljit Singh died on 13.07.2020. Thereafter, when the plaintiff-respondent demanded the amount the defendant-petitioners refused to pay the same. Hence, the suit.

7. Hon’ble Supreme Court in case of **Salim D. Agboatwala & Ors. vs. Shamalji Oddhavji Thakkar & Ors. [AIR 2021 SC 5212]** has held as under :

> *“10. Insofar as the rejection of plaint on the ground of limitation is concerned, it is needless to emphasis that limitation is a mixed question of fact and law. It is the case of the appellants/plaintiffs that only after making inspection of the records in connection with the suit land available in the office of defendant No.3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before the ALT were collusive, fraudulent and null and void. The appellants/plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.”*

In case of **Chhotanben & Anr. vs. Kiritbhai Jalkrushnabhai Thakkar & Ors. [2018(5) RCR (Civil) 163]**, the 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."*

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. 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 any case whether the suit is barred by limitation in the present case and whether the issuance of cheques in the year 2020 would amount to an acknowledgment would be a matter of trial. On a meaningful reading of the plaint it cannot be said that the suit is barred by limitation.

9. In view of the above, I do not find any illegality and infirmity in the order passed by the learned Trial Court. The present revision petition, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

10. Needless to say that the Trial Court would frame an issue regarding limitation to be decided in accordance with law.

04.03.2024 **(ALKA SARIN)**
Aman Jain **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO