In the High Court of Punjab and Haryana at Chandigarh

CR No.3955 of 2024(O&M)
Date of Decision: 17.09.2024

Shakti Kumar .....Petitioner

Versus

Sky Infrastructure Pvt. Ltd. ....Respondent

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Akshay Chadha, Advocate and
Ms. Taanvi Dhull, Advocate for the petitioner.

Mr. Vishal Sodhi, Advocate for the respondent.

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RITU TAGORE, J.

1. Challenge in this revision petition is to the order dated 12.03.2024 (Annexure P-4), passed by learned Civil Judge (Junior Division), Dera Bassi, District S.A.S. Nagar (Mohali), passed in CS No.757 of 2023/CS No.555 of 2023 titled 'Sky Infrastructures Pvt. Ltd. Vs. Shakti Kumar', whereby an application dated 19.08.2023 (Annexure P-2), filed by petitioner/defendant under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (in short 'CPC'), seeking rejection of plaint (Annexure P-1) has been dismissed.

2. Learned counsel for the petitioner/defendant contends that respondent/plaintiff, a private limited company, instituted a suit seeking possession of the suit land, measuring 19 kanals 02 marlas, situated at village Mubarikpur, Tehsil Dera Bassi, District S.A.S. Nagar, through a

decree of specific performance and permanent injunction, and in alternate, a money decree, detailing the facts and circumstances leading to execution of agreement to sell dated 28.05.2018 between the petitioner/defendant, the owner of the suit land and the respondent/plaintiff, for total sale consideration of Rs.3,18,35,400/-, with part payment of sale consideration of Rs.2,43,35,400/- made on several occasions as stated in the plaint. Further according to the respondent, the petitioner refused to honor the agreement and get the sale deed executed according to the terms and conditions of agreement to sell dated 28.05.2018, even though respondent has always been and continues to be ready and willing to perform his part of the contract.

3. Learned counsel submits that upon notice of the suit (Annexure P-1), the petitioner/defendant filed the application dated 19.08.2023 (Annexure P-2) under Order 7 Rule 11 CPC, pleading that the suit (Annexure P-1), filed by the respondent/plaintiff is not maintainable. It is clearly barred by the law of limitation, does not disclose any cause of action. Further, the respondent/plaintiff is not entitled to the relief as the respondent is guilty of breaching the terms and conditions of agreement to sell dated 28.05.2018, due to failure to make the payment according to the schedule outlined in the agreement to sell. To support his contention, learned counsel referred to the photocopy of the respondent's bank account statement (Annexure P-8) indicating that the payment of Rs.5 lakhs made on 03.04.2019 and 13.03.2019 respectively do not pertain to the petitioner's bank account. The cheques mentioned therein relate to other deals, which too were dishonored and led to the initiation of the criminal as well as civil

proceedings against the respondent/plaintiff.

4. Learned counsel for the petitioner further submits that the legal position is no more *res integra* that a litigant cannot be allowed to camouflage the delay by clever drafting, as the law of limitation is based on public policy. Learned counsel submits that it has been held in plethora of judicial decisions, when a suit is apparently barred by law of limitation, the plaint should be rejected. However, respondent/plaintiff, by clever drafting tried to create semblance of cause of action and maneuver the law of limitation which cannot be permitted under the law.

5. Learned counsel argues that, according to the case of the respondent/plaintiff, the agreement to sell was executed on 28.05.2018. In para No.14 and 15 of the plaint (Annexure P-1), the respondent has taken the averments that the petitioner/defendant failed to execute the sale deed on 03.04.2019 despite his assurance to do so. In para No. 24, the respondent pleaded that, several causes of action arose in his favour due to petitioner's/defendant refusal to execute the sale deed according to the terms and condition of agreement to sell dated 28.05.2018, with the final refused to get the sale deed executed, a day before the filing of the suit on 30.05.2023.

6. Learned counsel contends that petitioner has denied all these allegations as set out in the plaint, yet the assertions contained in these paragraphs make out the refusal of specific performance of agreement on the part of the petitioner on 03.04.2019 and from this date, the suit filed on 30.05.2023 is clearly barred by the law of limitation. Learned counsel submits that as per Article 54 of the The Limitation Act, 1963 (in short 'the

Act'), the period of limitation to file the suit for specific performance is three years from the date when the plaintiff has notice for the first time that the performance has been refused. Learned counsel submits that it is trite that limitation once starts to run from the accrual of cause of action for the first time, then it will not stop by subsequent enlargement of cause of action by raising pseudo multifarious causes of action. It is stated that suit of the respondent/plaintiff, was barred on 30.05.2023 (the filing date), when the period of limitation is reckoned from the first date of refusal on the part of the petitioner on 03.04.2019. The suit was required to be filed within three years i.e. up till 02.04.2022.

7. Learned counsel further submits that in view of the clear provisions of the Act, the target date of execution of sale deed, as mentioned in the agreement to sell, is not to be reckoned with while computing the period of limitation. It is argued by the learned counsel that the observations made by the learned Trial Court that the parties would be at liberty to lead evidence on cause of action and on the point of limitation, on framing of issues by the Court, is clearly indefensible in the eyes of law, when the suit as such is not maintainable being palpably barred by the law of limitation. Learned counsel urges to set aside the impugned order and prayed for rejection of the suit/plaint as envisaged under Order 7 Rule 11 CPC. To support his contention, learned counsel referred to the judgment of Hon'ble the Supreme Court in ***Khatri Hotels Private Limited and another Vs. Union of India and another, 2011(9) SCC 126***; judgments of this Court in ***Narender Kumar Nangia Vs. Harjinder Pal Singh, 2018 (1) Law Herald***

337; Sardar Singh Vs. Jaswinder Singh and another, 2010(34) RCR (Civil) 10; judgment of Rajasthan High Court in ***Dinesh Parmar and another Vs. Smt. Usha Sharma and another, 2016 (Suppl) Civil Court Cases 252 (Rajasthan)***; judgment of Delhi High Court in ***M/s Spearhead Digital Studio Pvt. Ltd. Vs. H.K. Mitroo, 2014(4) Civil Court Cases 138 (Delhi)*** and judgment of Allahabad High Court in ***Braj Bhushan Mittal Vs. Jeet Singh, 2021 (3) Civil Court Cases 242.***

8. Contrarily, learned counsel for the respondent/plaintiff defended the impugned order stating that the learned Trial Court rightly rejected the application under Order 7 Rule 11 CPC (Annexure P-2) being ill-conceived. Learned counsel submits that respondent/plaintiff pleaded various facts and circumstances, showing *mala fide* conduct on the part of the petitioner/defendant, in refusing to honor the agreement to sell dated 28.05.2018, despite receiving Rs.2,43,35,400/- towards sale consideration from the respondent/plaintiff on different occasions, and constant readiness and willingness on the part of the respondent/plaintiff to perform its part of the contract.

9. Learned counsel further contends that respondent/plaintiff has pleaded several events giving rise to a cause of action against the petitioner/defendant, seeking a decree of possession by way of specific performance and permanent injunction, or alternatively, a decree for recovery of the amount as detailed in the relief clause of the plaint. Therefore, this is not a case that fails to disclose a justifiable cause of action in favor of the respondent to initiate a lawsuit against the petitioner. Learned

counsel submits that learned Trial Court, after appreciating the facts pleaded in the plaint, rightly concluded that issue of limitation is a mixed question of fact and law, with a triable issue that can only be decided upon after the appreciation of evidence.

10. The learned counsel further submits that the suit filed by the respondent/plaintiff is well within the period of limitation. Article 54 of the Act stipulates that limitation for filing a suit for specific performance of contract is three years from the date fixed for the performance of the contract, or, if no such date is fixed, then from the date when the plaintiff has notice that performance is refused. Learned counsel states that a specific date for execution of agreement to sell was fixed as 05.06.2020 in the agreement to sell dated 28.05.2018. The suit was filed on 30.05.2023 which is well within the period of limitation, as per Article 54 of the Act. It is stated that the petitioner/defendant is not willing to honor the agreement to sell, as the prices of the surrounding lands have increased significantly, and now seeks to extract more money from the respondent/plaintiff, by exerting undue pressure including filing false and frivolous criminal complaints and civil suits, and the present application has also been filed with a similar motive. A prayer is made to dismiss the petition being meritless.

11. I have heard learned counsel for the parties, gone through the record with their assistance and impugned order in the light of the arguments submitted by them, the pleadings of the respondent/plaintiff as set out in the plaint as well as the provisions of law and the judicial precedents referred.

12. The observations made by learned Trial Court, while dismissing

the application under Order 7 Rule 11 CPC in para Nos.5, 6 and 7 reads as follows:-

> "5. Perusal of the file shows that the plaintiffs have filed the present suit for Specific Performance of the agreement to sell dated 28.05.2018 and in the plaint, it has been specifically mentioned that the date for execution and registration of the sale deed was fixed as 05.06.2020. The present suit has been filed on 30.05.2023 which appears to have been filed within the period of limitation. Moreover, question of limitation is a mixed question of the fact and law. In support of his application, the counsel for the applicant/defendant has relied upon the following case laws:- 2018 (1) Law Herald 337 (P&H) Narender Kumar Nangla Vs. Harjinder Pal Singh, 2010 RCR Civil, (P&H), Sardar Singh Vs. Jaswinder Singh and Another, 2016 (Suppl.) Civil Court Cases, Dinesh Parmar and Another Vs. Usha Sharma and Another, 2014(4) Civil Court Cases, M/s Spearhead Digital Studio Pvt. Ltd. Vs. H.K. Mitroo and 2012 (3) Civil Court Cases, Braj Bhushan Mittal Vs. Jeet Singh.
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> 6. It is settled law that while deciding an application under Order 7 Rule 11 CPC, the court has to look into the averments mentioned in the plaint as also observed by Hon'ble SC in case titled as **"Shakti Bhog Food Industries Vs. Central Bank of India" 2020 SCC online 482** that in order to consider an application under Order 7 Rule 11, CPC, the court has to look

into the plaint. It is also clear that the averments in the written statement are immaterial and its duty of the court to scrutinize the pleas in the plaint. Further, so far as the plea of the applicant qua limitation and absence of cause of action is concerned, it is relevant to mention that the Hon'ble Punjab and Haryana High Court in case titled as **"Satish Kumar Saini vs Jasvir Kaur and another, 2019 (4) Civil Court Cases (P&H)** held that issue of jurisdiction, cause of action and limitation can only be decided after framing of necessary issues and leading of evidence by the parties. In any case, pleas taken up by the plaintiff can only he answered by the Court at an appropriate stage after framing of issues and leading of evidence by the parties. Provision in terms of Order 7 Rule 11 CPC are drastic and should be exercised with due care and caution. The triable issues cannot be ignored while considering the plea under Order 7 Rule 11, CPC. It is settled principle of law that at the stage of consideration of an application under Order 7 Rule 11 CPC, only averments made in the plaint are to be considered.

7. In the case at hand, the court would frame an issue qua limitation and cause of action and parties would be at liberty to lead evidence on that issue. Therefore, I do not deem it fit to outrightly reject the plaint on the above mentioned ground. Accordingly, the present application is hereby dismissed and disposed of. However, nothing observed herein would have any

bearing on the opinion of the court on merits."

13. As the impugned order was passed on the application filed by the petitioner/defendant under Order 7 Rule 11 CPC, seeking rejection of the plaint, therefore, it is apposite to go through the provisions of Rule 11 of Order 7 CPC as well as Article 54 of the Act, which reads as under:-

> "11. Rejection of plaint.— The plaint shall be rejected in the following cases:—
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> (a) where it does not disclose a cause of action;
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> (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
>
> (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
>
> (d) where the suit appears from the statement in the plaint to be barred by any law;
>
> (e) where it is not filed in duplicate;
>
> (f) where the plaintiff fails to comply with the provisions of rule 9:
>
> Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or

supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

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Article 54 of Limitation Act, 1963

Sr. No.	Description of suit	Period of limitation	Time from which period begins to run
54.	For specific performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

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14. A perusal of the provisions of Article 54 of the Act reveals that it runs into two parts. The first part deals with the limitation which begins from the date fixed for performance of contract; while second part applies when no date is fixed for performance and limitation starts when the plaintiff has the notice that performance is refused.

15. At this stage, it is also important to consider certain principles outlined in various judicial decisions regarding the adjudication of an application under Order 7 Rule 11, CPC. These decisions establish that while ruling on an application under Order 7 Rule 11 (a) and (d) CPC, the averments made in the plaint are germane and averments in the written statement are immaterial. Furthermore, it has been held in number of judicial precedents that plea of limitation cannot be decided as an abstract principle of law *dehors* the facts, as in every case the starting point of limitation has to be ascertained, which is entirely a question of fact. In certain cases, plea of limitation becomes a mixed question of fact and law. At the same time, the

Courts have not completely ruled out the power of Court under clause (a) and (d) of Order 7 Rule 11 CPC to reject the plaint, as barred by limitation, if it becomes apparent from the reading of the plaint. In this regard, reference can be made to authority titled as ***Ramesh B. Desai and others Vs. Bipin Vadilal Mehta and others, 2006 (5) SCC 638***. In ***N.V. Srinivasa Murthy and others Vs. Mariyamma (dead) by proposed LRs and others, 2005 (5) SCC 548***, it was held that suit, *prima facie*, barred by limitation can be rejected at the threshold under clause (d) of Rule 11 of Order 7 CPC. In case of ***Popat and Kotecha Property Vs. State Bank of India Staff Association, 2005 (7) SCC 510***, Hon'ble the Apex Court held that 'clause (d) of Order 7 Rule 11 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 CPC applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.' Thus, based on the judicial principles as culled out from various judicial decisions, it can be fairly observed that it is the mandate upon the Courts to reject the plaint, where the suit from the statement in the plaint appears to be apparently time barred by any law including the law of limitation, while exercising the provisions of Order 7 Rule 11 (d) CPC.

16. In view of the settled legal position, while considering such an application, the Court is required to meaningfully consider the averments of the plaint with a view to ascertain the fact that the suit filed by the plaintiff

was within the period of limitation and how cause of action has accrued to the plaintiff, therefore, it has become imperative for this Court to examine the entire plaint.

17. The respondent/plaintiff instituted a suit for possession by way of specific performance of agreement to sell dated 28.05.2018, permanent injunction and in alternate recovery of Rs.3,18,35,400/- against the petitioner/defendant.

18. So far as paras No.1 to 9 of the plaint are concerned, averments contained therein are concerning the execution of agreement to sell dated 28.05.2018 regarding the suit land and other two deals with respect to the other lands; the total consideration agreed upon between the parties to be paid for the purchase of suit land; the terms and conditions of making the payment of remaining sale consideration and date of execution of the sale deed and its registration as 05.06.2020; part- payment of sale consideration by the respondent/plaintiff on different dates to the petitioner/defendant. The paras No.10 to 14 deal with the dispute that arose between the parties regarding the other deals as well as the present agreement to sell, the filing of the cases both civil and criminal by the petitioner/defendant against the respondent/plaintiff and allegations of blackmailing of respondent/plaintiff to extract the extra money from the respondent/plaintiff and settlement by the respondent/plaintiff under duress.

19. The para No.14 and 15 of the plaint deals with the assertions that the respondent/plaintiff paid Rs 1,68,50,000 to the petitioner /defendant until 03.04.2019 and in pursuant to the agreement to sell and the assurance given

by the petitioner/defendant, respondent came to the place of execution and registration of sale deed on 03.04.2019, ready with the money, stamp papers, other necessary documents and also paid Rs 25,00,000 in cash in lieu of one of the seven post dated cheques to the petitioner/defendant, who despite receiving the amount, did not get the sale deed executed. Instead, the petitioner destroyed the cheque and left the place making a pretext and thereafter remained unreachable for a long time, and execution of the sale deed could not take place. It is also averred that after repeated efforts by the respondent/plaintiff, the petitioner/defendant was contacted, however, he insisted upon clearing the other deals, which were separate deals altogether. In paras No.16 to 23, it has been pleaded that petitioner/defendant's intentions became *mala fide* as the price of the lands increased manifold, whereas respondent/plaintiff has always been and continues to be ready and willing to honor his part of the contract and paid Rs.2,43,35,400/- to the petitioner/defendant. In para No.24, the respondent/plaintiff pleaded his cause of action by stating that it arose on many occasions as narrated in the plaint and lastly on a day before filing the suit, when the petitioner/defendant threatened to alienate the suit property to third persons.

20. A plain reading of the plaint reveals that the respondent/plaintiff, based its suit on an agreement to sell dated 28.05.2018 which is apparently not in dispute by the petitioner/defendant as evidenced by the fact that he filed an application under Order 7 Rule 11 CPC based on this agreement to sell. The terms and conditions of agreement to sell are also not disputed by the petitioner/defendant. In view of these admitted facts and

the averments raised in the plaint, which has been detailed above, the contention of learned counsel for the petitioner, that the limitation in present case is not to be reckoned from the target date i.e., 05.06.2020 fixed for execution and registration of the sale deed as per the first part of Article 54 of the Act, cannot be countenanced. This is because the first part of Article 54 of the Act categorically provides that where a date is fixed for the performance, then said date is to be considered for counting the three-year period for filing a suit for the enforcement of specific performance of a contract. The second part of Article 54 comes into operation when no such date is fixed for performance of the contract. In that eventuality, the limitation would start to run from the first date when the plaintiff (herein the respondent-company) has the notice of refusal to perform. Although, in the present case, respondent/plaintiff has pleaded in para No.24 of the plaint that cause of action arose on many occasions. However, in the present case, the respondent/plaintiff is governed by the first part of Article 54 of the Act and not by the second part of the Article 54. Therefore, the contention of the counsel for the petitioner that the limitation period for the respondent/plaintiff to file the suit should be reckoned from 03.04.2019 when the petitioner/defendant allegedly did not get the sale deed executed and registered is untenable.

21. The other argument presented by the learned counsel for petitioner that in cases where the plaintiff pleads several causes of action, as in the present case, then the period of limitation should be counted from the first default or refusal, in accordance with the second part of Article 54 of the

Act. Learned counsel submits that in the present case, first default occurred on 05.07.2018 when respondent/plaintiff failed to make the payment as outlined in the agreement. It is settled position of law that the averments of the written statement are not to be considered when dealing with an application under Order 7 Rule 11 CPC. The plea of non payment of part payment of sale consideration available to the petitioner/defendant is not to be considered for reckoning the period of limitation while dilating upon the application under Order 7 Rule 11 CPC. As observed above, when a specific date has been agreed upon and settled between the parties for performance of a contract, the period of limitation shall begin to run from that date for filing the suit for specific performance and no other date; even if the plaintiff also pleads other events of refusal of the contract. The perusal of the plaint (Annexure P-1), *prima facie*, does not suggest that respondent/plaintiff attempted to camouflage the delay to bypass the limitation period. Nonetheless, the petitioner/defendant is always at liberty to raise all pleas including the plea of maintainability of the suit on any legal ground, in his written statement, and may also request the learned Trial Court to treat such legal issue(s) as preliminary. The learned Trial Court may decide on such request as it deems fit.

22. The facts of the case of **Khatri Hotels Pvt. Ltd.'s** case (supra) are distinguishable as in the said case, appellant/plaintiff has filed a suit for declaration of title, mandatory and permanent injunction against the Delhi Development Authority, restraining them from interfering in their possession and demolition of the construction. It was held that the plaintiffs were in

unauthorized possession. The appeals and suits were dismissed. Special Leave Petition was also dismissed. In this background of facts, it was observed that if a suit is based on multiple cause of actions, the period of limitation will begun to run from the date when the right to sue first accrues. Successive violation of the right will not give rise to fresh cause of action and the suit is liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

23. The facts of **Narender Kumar Nangia's** case (supra) are also distinguishable as in the said case, no date or time was fixed for performance of agreement. In these circumstances, it was held that in the suit for specific performance, limitation would start from the date of first refusal to perform by the defendant. The second part of Article 54 of the Act was held applicable in given facts. However, in the present case, the agreement to sell contains a specific date for performance of the agreement.

24. The facts of **Sardar Singh's** case (supra) are also distinguishable wherein the suit was filed after more than 08 years of the accrual of cause of action. In the said case, a specific date was given for execution of agreement to sell. Here in the present case, when the period of limitation is reckoned from the date of execution of the sale deed, the suit is within the period of limitation. The facts of **Braj Bhushan Mittal's** case (supra) are also distinguishable as in the aforesaid case there was no date fixed for the performance of the contract. In the case on hand, a specific date was fixed by the parties to perform the agreement. **M/s Spearhead Digital Studio Pvt. Ltd.'s** case (supra), it was a case of oral agreement to sell.

However, in the present case, there is written agreement to sell.

25. As a sequel to the foregoing discussion, this Court does not find any illegality, irregularity, infirmity or perversity in the impugned order, warranting any intervention by this Court.

26. The revision petition stands dismissed.

27. It is noted that observations made above should not be construed as an expression of opinion on the merits of the case. Same are purely confined to the present controversy and deliberations.

28. Pending miscellaneous application(s), if any, is/are disposed of accordingly.

SEPTEMBER 17, 2024 **(RITU TAGORE)**
d.gulati **JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No