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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-4008-2024
Date of decision : 19.07.2024

Foremost Dairies Pvt. Ltd. and another Petitioners

versus

Mohammad Sultan Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Harsh Goyal, Advocate
for the petitioners.

PANKAJ JAIN, J. (Oral)

1. Challenge is to the order dated 31.05.2024, whereby application filed by the petitioner-defendant under Order 7 Rule 11 CPC seeking rejection of the plaint stands dismissed.
2. Plaintiff filed suit seeking recovery of Rs.4,57,141/- on the basis of business transactions claiming that material was supplied to the defendant against invoices and against the outstanding amount, defendant admitting the aforesaid liability, issued post dated cheques dated 10.01.2020, 28.02.2020 and 05.03.2020. However, the same stand dishonoured on 07.03.2020 with the remarks “Funds Insufficient”. Defendant appeared and filed application under Order 7, Rule 11 claiming that even as per the averments made in the plaint, the date of transaction is 04.04.2019, 06.04.2019, 12.04.2019 and 24.04.2019 and thus the present suit was filed on 12.01.2023 seeking recovery of the amount qua the aforesaid transactions would be barred

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by time and thus the plaint needs to be rejected. Reply was filed by the plaintiff claiming that since the cause of action accrued only after the cheques were dishonoured, the suit was well within the limitation.

3. Trial Court dismissed the application moved by defendant-petitioner holding that since it was a plaint based upon running account and issuance of multiple cheques, the plea of limitation being raised by the defendant cannot be entertained at this initial stage, the same being mis question of facts of law.

4. Counsel appearing for the petitioners while assailing impugned order submits that after the defendant appeared, an application was moved wherein the plaintiff was asked to produce the invoices. From the aforesaid invoices, it is evident that the transactions relate to 04.04.2019, 06.04.2019, 12.04.2019 and 24.04.2019 and thus evidently the suit being barred by time, Trial Court erred in dismissing the application filed by the petitioner.

5. I have heard counsel for the petitioners and have carefully gone through the records of the case.

6. In order to appreciate the contention raised, it will be apt to pursue Order 7 Rule 11 which reads as under:-

“Rejection of plaint.

The plaint shall be rejected in the following cases-

- (a) where it does not disclose a cause of action;
- (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 returned upon paper insufficiently

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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:

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.”

7. Trite it is that in order to adjudicate upon the application under Order 7 Rule 11, it is the averments in the plaint which have to be examined. It was incumbent upon the defendant to show and make out a case from the plaint itself that the same was barred by time. In para 4 of the plaint, the details of the cheques have been provided the same are dated 28.02.2020 and 05.03.2020. In para 7 to 9, plaintiff has fully detailed out as to how the cheques were dishonoured and when cause of action arose in his favour. Thus, at this stage, it cannot be held that from the plaint, the suit is barred by law of limitation. At this stage, counsel for the petitioner prays for liberty to raise all pleas during the course of trial.

8. Needless to say, once defendant raises defence of limitation, the Trial Court is required to frame the issue and decide the same in accordance with law. This Court is quite sanguine that the

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observations made hereinafter being purely for the adjudication of application under Order 7 Rule 11 shall not be construed as a final expression on the merits of the case.

9. Disposed off, accordingly.

(PANKAJ JAIN)
JUDGE

19.07.2024

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Whether speaking/reasoned : Yes

Whether Reportable : No