

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.4758 of 2023(O&M)
DATE OF DECISION: 26.04.2024

Gurbachan Singh through LRsPetitioner

VERSUS

Punjab State Civil Supplies Corporation Ltd. Chandigarh &Ors.....Respondents

CORAM HON’BLE MR. JUSTICE GURBIR SINGH

Present Mr.Sunny Singla, Advocate,
 for the petitioner.

 Mr. Ashish Verma, Advocate,
 for respondent.

GURBIR SINGH, J
CM-4633-CII-2024

Allowed, as prayed for.

Annexures A-1 and A-2 (documents dated 19.01.2024 and 12.02.2024) are taken on record, subject to all just exceptions.

CM-4634-CII-2024

Since the main case is already fixed for today, the instant application for early hearing of the main case is hereby rendered infructuous and is dismissed as such.

CR-4758-2023

1. Challenge in this revision petition is to the impugned order dated 19.07.2023 (Annexure P-5), passed by learned Civil Judge (Sr.Divn.), Mansa, whereby, the application filed by the defendant/petitioner under Order 7 Rule 11 CPC for rejection of plaint was dismissed.

2. The brief facts necessary for the decision of this revision petition are that the respondent/plaintiff filed a suit for recovery on the basis of shortage found in the stocks of wheat in the year 2009-2010 at PUNSUP Centre Budhlada District Mansa. Written statement to the suit was filed by petitioner/defendant and an application under Order 7 Rule 11 CPC was filed for rejection of plaint, which was dismissed by the impugned order.

3. Counsel for the petitioner has argued that shortage came in the year 2009-2010. Gurbhachan Singh petitioner retired on 31.01.2015 and he died on 08.06.2016. No departmental proceedings could be initiated after retirement in violation of the provisions of **Rule 202 (b)(ii) of the Punjab Civil Services Rules, Vol. II**. The respondent/plaintiff could not bring the suit within period of limitation by clever drafting, which otherwise is barred by limitation. In support of his contention that suit is clearly time barred, learned counsel has placed reliance upon the law laid down in **C.S.Ramaswamy v. V.K.Senthil and Ors. 2022(4) RCR (Civil) 426.**

4. It is further submitted that no specific cause of action is disclosed by the plaintiff/respondent in the entire plaint. The limitation period is required to be considered with regard to substantive relief claim and not the consequential relief. He has also placed reliance upon the law laid down by Hon'ble Supreme Court in **Rajpal Singh versus Saroj (deceased) through Lrs and anr. 2022(3) Law Herald (SC) 1895.** Petitioner moved a Civil Writ Petition No.25627 of 2018 in the year 2018 but respondent started enquiry during the pendency of the above writ petition.

5. I have heard the rival submissions of the learned counsel for the parties.

6. It is well settled law that for deciding application under Order 7 Rule 11 CPC, averments made in the plaint are to be seen. The defence raised by

the defendant cannot be construed for deciding such application. Extract of the application under Order 7 Rule 11 CPC filed by the petitioner is as under:-

“2. That the plaintiff has filed this suit by making concealment of true facts and on the basis of false averments to harass the defendant

3. That the inspectors of the plaintiff had filed one CWP No. 16644 of 2001 before the Hon'ble Punjab and Haryana High court wherein it was ordered vide order dated 18- 02-2001 that recovery on account of moisture gain shall remain stayed. Copy of the order is attached herewith.

4. That keeping in view of the above order dated 18-02-2001, the PUNSUP vide its letter no. Admn Spl. (4) 2001/2001 dated 15-10-2001 written to all the regional managers/district managers that the recovery orders/notices on account of less access be not passed/issued. Copy of letter is attached herewith.

5. That I view of the order dated 18-02-2001 and letter dated 15-10-2001 the plaint of this suit is liable to be rejected. Or stated uptill the final decision of above said civil writ petition as the present civil suit is based upon less access.”

7. The only point raised in the application is that Inspectors of the plaintiff had moved one CWP No.16644 of 2001, wherein, it was ordered vide order dated 18.01.2001 that recovery on account of moisture gain shall remain stayed, so plaint is liable to be rejected or stayed till decision of writ. Admittedly, the petitioner was not party in the said writ. Whether recovery on account of the moisture gain can be effected to the petitioner or not is a question of defence and this is not a ground to reject the plaint. Suit is not barred by any law. It is filed on specific cause of action. The Revisional Court is to see whether order passed by the Court below is in accordance with law or not.

8. Counsel for the petitioner has failed to convince under which provisions of the law, the suit is barred.

9. The instant revision petition being without merit is hereby dismissed.

26.04.2024
mamta

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No