

2024:PHHC:103468



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

129

CR-259-2024 (O&M)

Date of decision: 08.08.2024

Herike Rice Mills and another

...Petitioners

Versus

Punjab State Co-operative Supply and Marketing Federation Ltd. and
others

...Respondents

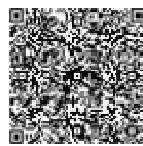
CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Rishab Kumar Jain, Advocate for the petitioners.

VIKAS SURI, J.

1. This petition under Article 227 of the Constitution of India has been filed by defendant-petitioners assailing the order dated 05.07.2023 (Annexure P-1) whereby an application under Order 7 Rule 11(d) CPC, filed by petitioner No.2, has been dismissed.

2. Briefly stated, the plaintiff-respondents filed a suit on 21.12.2017 seeking relief of recovery of Rs.2,10,00,000/- from the defendants along with interest thereon. On notice of the suit having been issued, petitioner-defendant No.3 entered appearance and filed an application seeking rejection of the plaint on the ground that the suit filed by the plaintiff is barred by limitation and there was breach of contract. The suit was resisted on other grounds as well. The said application was contested by the plaintiff-respondents and was dismissed



vide order dated 05.07.2023 passed by learned Additional Civil Judge (Senior Division) Barnala. Challenge to the said order has been raised in the present petition.

3. Learned counsel for the petitioners has argued that as per the agreement dated 26.10.1994 (Annexure P-5), the cause of action to claim damages on the ground of breach of contract arises on the date when the contract was breached and thus, the suit having been filed beyond the stipulated period, was barred by law of limitation. Reliance has been placed on *State of Gujarat vs. M/s Kothari Industries*, (2016) 14 SCC 761 and *Urvashiben and another vs. Krishnakant Manuprasad Trivedi*, 2019(1) CCC 467.

4. Heard learned counsel for the petitioners and perused the impugned order and the record appended with the instant petition.

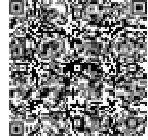
5. It is trite law that for consideration of an application under Order 7 Rule 11(d) CPC only the averments made in the plaint are required to be seen. Neither the averments made in the application seeking rejection of the plaint nor the defence taken in the written statement is to be looked into. In *Srihari Hanumandas Totala vs. Hemant Vithal Kamat and others*, (2021) 9 SCC 99, the Apex Court held that an application under Order 7 Rule 11 CPC must be decided within the four corners of the plaint. Summarizing the guiding principles for deciding an application under Order 7 Rule 11(d) CPC, the following principles, in addition to two other, were enumerated with regard to the adjudication of the plea of res judicata:-



- i. To reject the plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.
- ii. The defense made by the defendant in the suit must not be considered while deciding the merits of the application.

6. The Hon'ble Supreme Court of India following the dicta of ***P.V. Guru Raj Reddy vs. P. Neeradha Reddy, (2015) 8 SCC 331*** held that the provision under Order 7 Rule 11(d) CPC has limited application. For its applicability it must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. What would be relevant for invoking the said provision are the averments made in the plaint and for that purpose, there cannot be any addition or subtraction. No amount of evidence can be looked into for the purpose of invoking the aforesaid provision. The Apex Court further held that rejection of the plaint under Order 7 Rule 11 CPC is a drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. The above dicta has been relied upon in ***Salim D. Agboatwala and others vs. Shamalji Oddhavji Thakkar and others, (2021) 17 SCC 100***.

7. The decision of the Apex Court in ***Urvashiben's case*** (supra) relied upon by learned counsel for the petitioners is of no avail to



him. After noticing the well settled principles noticed hereinabove, the Apex Court declined to interfere with the order of the High Court whereby it had allowed the regular first appeal against the order of the trial Court allowing the application under Order 7 Rule 11(d) CPC wherein it was ordered to reject the plaint. The relevant paragraphs of the judgment are reproduced hereunder for ready reference:-

“11. It is fairly well settled that, so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that limitation can be the ground for rejection of plaint in exercise of powers under O.VII R.11(d) of the CPC. Equally, it is well settled that for the purpose of deciding application filed under O.VII R.11 only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into.....

xxxx

xxxx

xxxx

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. The decision in *Kothari's case* (supra) relied upon by the petitioners would also not be applicable and as such is distinguishable on facts. It is noticed that in the said case the issue of limitation was not pleaded as a ground before the trial Court or before the High Court and was pressed for the first time in the course of oral arguments before the High Court. The High Court, after noting the contentions raised by the parties, held that the point of limitation was a mixed question of fact and law and therefore, could not be adjudicated at that point and even if it could have been adjudicated, the suit was not barred by the principles of prescription. The suit was found to be within the prescribed period of limitation.

9. A conjoint reading of the above, leaves no room for doubt that the question of limitation is a mixed question of fact and law, particularly in the light of law laid down in the authoritative precedents noticed above. The provisions of Order 7 Rule 11(d) CPC would have limited application and in the present case, the question of limitation can only be determined after the parties have led their evidence.

10. Accordingly, finding no merit in the instant petition, the same is dismissed.

August 08, 2024
sumit.k

(VIKAS SURI)
JUDGE

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