IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CMPMO No.122 of 2023
Decided on: 04.11.2025

Rameshwari Thakur ……. petitioner

Versus

Jagtamba Thakur

…….respondent

Coram:
Hon'ble Mr. Justice Bipin Chander Negi, Judge
Whether approved for reporting? [1]

For the petitioner	**:**	Mr. Sanket Sankhyan, Advocate.
For the respondent	**:**	Mr. Manohar Lal Sharma, Advocate.

Bipin Chander Negi, Judge (oral)

The present petition has been filed against the order dated 5.1.2023 passed in Civil Suit No. 102/1 of 2017 titled as Jagtamba Thakur vs. Rameshwari Thakur by the Court of Ekansh Kapil, Civil Judge Bilaspur District Bilaspur, whereby an application filed under Order 7 Rule 11 CPC for rejection of the plaint filed by the present petitioner/defendant has been dismissed.

2. Heard counsel for the parties. Perused the pleadings and the impugned order.

3. The suit in the case at hand has been filed for damages. From a perusal of the plaint, it is evident that respondent/plaintiff in the case at hand had received a cheque

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

from the present petitioner/defendant, which was dishonored. As a sequel thereto, proceedings under Section 138 read with Section 142 of the Negotiable Instruments Act were initiated against the present petitioner/defendant. The Trial Court and the 1st Appellate Court had convicted the present petitioner/defendant. During the pendency of the revision pending before the Hon'ble High Court, the matter was compounded. In the aforesaid facts and attending circumstances on account of the harassment, which was caused to the present respondent/plaintiff that a suit for damages has been filed.

4. From the application filed under Order 7 Rule 11 CPC, it is evident that the grounds taken for rejection of the plaint in the case at hand are two folds: (a) that the plaint does not depict any cause of action (b) that the suit filed is time barred. "Cause of action" is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to sue against the defendant". In this respect reference can be made to the decision of the Hon'ble Supreme Court in ***Swamy Atmananda and others vs. Sri Ramakrishna Tapovanam and others, 2005 (10) SCC 51,*** wherein, it has been held as under:-

> ***24. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly***

> ***accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded."***

5. In the case at hand, the harassment caused to the respondent/plaintiff on account of the cheque having been issued by the present petitioner/defendant and it being subsequently dishonored lead to a long drawn, protracted litigation which sufficiently depicts a cause of action entitling the respondent/plaintiff to file a suit for damages on account of harassment caused. Insofar as the plea of limitation is concerned, as has been correctly observed by the trial Court, limitation is a mixed question of law and fact and, therefore, cannot be decided at the threshold. Reference in this respect can be made to ***Civil Appeal No. 5622 of 2025, titled P. Kumarakurubaran vs. P. Narayanan and others.***

6. The present petition has been preferred under Article 227 of the Constitution of India. This Court has a restricted and limited jurisdiction to interfere under the correctional jurisdiction vested in it in terms of Article 227 of the Constitution of India, except to set right a grave dereliction of duty or flagrant abuse or violation of fundamental principle of law or justice, miscarriage of justice, un-reasonable conclusion and perversity.

7. Besides the aforesaid, in a supervisory jurisdiction reviewing or re-weighing evidence, substituting conclusions, correcting every error of fact or even a legal flaw when the final

finding is justified or can be supported is not permissible. ***(See Sadhana Lodh vs. National Insurance Co. Ltd. & another, (2003)3 SCC 524, and Garment Craft vs. Prakash Chand Goel, (2022)4 SCC 181).***

8. In the case at hand, for the reasons stated here-in above, I am of the considered view that no ground is made out in the present petition for invoking the jurisdiction of this Court under Article 227 of the Constitution of India.

9. In view of above terms, I find no merit in the present petition and the same is dismissed accordingly. Pending miscellaneous application(s), if any, shall also stand disposed of***.***

(Bipin Chander Negi)
Judge

04th November 2025
Tarun