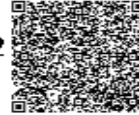


CR-6262-2023 (O&M)

2025:PHHC:044972



306

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6262-2023 (O&M)

Date of decision : 02.04.2025

Raj Singh

..... Petitioner

Versus

M/s M.R.Trading Co.

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

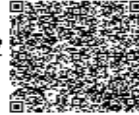
Present :- Mr. Jayoti Parshad Sharma, Advocate
for the petitioner.

Mr. Namit Khurana, Advocate
For the respondent.

PANKAJ JAIN, J. (ORAL)

1 Challenge is to the order dated 23.08.2023 passed by Civil Judge, Junior Division, Karnal (Annexure P-5) whereby the issue of limitation has been ordered to be treated as preliminary issue.

2 Plaintiff filed suit for declaration to the effect that he is entitled to recover an amount of Rs.18,65,832/-. In the suit defendant filed application under Order VII Rule 11 CPC claiming that the suit was barred by law as from the perusal of the plaint itself it can be held that the same was filed beyond the prescribed period of limitation. The said application was dismissed vide order dated 20.08.2019. The matter came before this Court in CR No.5318 of 2019. The revision was disposed off with the direction to the Trial Court to decide application for framing preliminary issue of limitation considering ratio of law laid down in ***Rajinder Singh Rathore Vs. G.S.Rathore (Ghanshyam Singh Rathore) and ors. 2018(2)***



Law Harald 967. Application was moved before the Trial Court praying for framing of the issue *qua* limitation and treating the same as preliminary issue. The same has been allowed by the Trial Court observing as under :-

“It is not in dispute that earlier plaintiff filed a suit for recovery and later on, same was dismissed vide judgment dated 06.10.2017. As per plaint, last transaction between parties of the suit was took place on 29.10.2011 whereas present suit was filed on 18.11.2017. A suit for recovery is to be filed within three years but here suit was filed in the year 2017 and therefore it can say that there is a ground for framing the issues of limitation as preliminary issues. Issue has been framed on 02.11.2019 but in view of findings of Rajinder Singh Rathore case (supra), issue of limitation i.e. issue no. 2 is treated as preliminary issues.

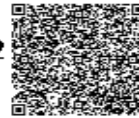
3 Provision as contained under Order XIV Rule 2 CPC reads as under:-

“2. Court to pronounce judgment on all issues.—(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.]

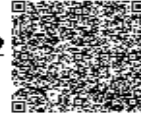


4 The provisions contained in Order XIV Rule 2 CPC came up for consideration before this Court in ***Major S.S. Khanna v. Brig. F.J. Dillon, AIR 1964 Supreme Court 497: (1964) 4 SCR 409*** wherein it has been ruled thus :-

"Under Order 14 Rule 2 where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issue of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all issues in a suit should be tried by the Court: not to do so, especially when the decision on issues even of law depends upon the decision of issues of fact, would result in a lop-sided trial of the suit."

5 The provision was amended by the 1976 Amendment Act. Interpreting the amended provision Supreme Court echoed the same view in ***Ramesh D. Desai and others v. Bipin Vadilal Mehta and others (2006) 5 SCC 638*** observing as under :-

"13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this



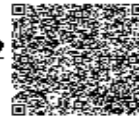
Court in **Major S.S. Khanna v. Brig. F.J. Dillon** and it was held as under: (SCR p. 421)

"Under Order 14 Rule 2, Code of Civil Procedure where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit."

*Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the above quoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a **preliminary issue** and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue."*

6 In **Satti Paradesi Samadhi & Philliar Temple v. M. Sankuntala** 2015(5) SCC 674 Supreme Court while dealing framed the precise issue as under:-

"14. The core question that emerges for consideration is whether an issue of limitation could at all have been taken up as a preliminary issue."



Relying upon the law laid down in Ramesh D. Desai s case answered the same as under:

20. We have not expressed any opinion with regard to the issue of limitation except saying that the present issue could not have been taken up as a preliminary issue. “

7 Question of limitation is a blend of law & fact. Trial Court erred in ordering question of limitation to be treated as preliminary issue. In view thereof impugned order cannot be sustained and the same is set aside.

8 Revision petition stands allowed.

02.04.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

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