

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.495 of 2009

Date of decision: 29.1.2009

M/s Shiv Shankar Rice Mills and others

.....Petitioners

Versus

M/s Bharat Rice Mills

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR GARG

* * *

Present: Mr. I.S. Ratta, Advocate for the petitioners.

* * *

Rakesh Kumar Garg, J.

This is defendants' revision petition challenging the order dated 9.1.2009 passed by the Additional Civil Judge (Sr. Division), Safidon dismissing his application filed under Order 7 Rule 11 (d) of the Code of Civil Procedure seeking rejection of the plaint being barred by the law of limitation.

The plaintiff-respondent filed a suit for recovery of Rs.40 lacs against the defendant-petitioners on 14.6.2007 alleging therein that the plaintiff and defendants had business dealings with each other. The defendants were availing financial assistance from the plaintiff on account of their close relations and had been mutually selling and purchasing the paddy to each other and there was an open, current and mutual account between the parties to the suit. The defendants admitted their liability of paying the amount due to the plaintiff when they filed their income-tax returns for the year ending 31.3.2004 in which they have shown their liability towards the plaintiff-respondent. The defendants also made a payment of Rs.1,00,000/- by cheque on 24.3.2005, thus, acknowledging

their liability to pay the said amount. The petitioners filed an application under Order 7 Rule 11 (d) CPC for rejection of the plaint on the ground that the suit which was filed on 14.6.2007 appears to be time barred.

The aforesaid application filed by the petitioners was contested by the plaintiff-respondent and the Additional Civil Judge (Sr. Division), Safidon vide impugned order held that there is a mixed question of law and facts involved as to whether the defendants have issued the cheque on 24.3.2005 and have also mentioned the debit of the plaintiff in the income-tax return for the year ending on 31.3.2004; so, this question can only be decided after adducing evidence and dismissed the application filed by the petitioners.

Challenging the aforesaid order of the trial Court, the learned counsel for the petitioners has vehemently argued that as per the plaint last transaction of debit/credit inter se the parties was on 25.9.2001 and therefore, the suit could be filed upto 24.9.2004 and therefore, the present suit filed on 14.6.2007 was clearly time barred. Relying upon Section 19 of the Limitation Act, learned counsel for the petitioners argued that in case part payment of dues was made beyond the period of limitation, the same do not provide for extension of limitation and thus, according to the learned counsel payment of Rs.1,00,000/- on 24.3.2005 vide cheque dated 24.3.2005 has no effect of extending the limitation and the suit of the plaintiff-respondent was liable to be rejected under Order 7 Rule 11(d) CPC. In support of his case, learned counsel for the petitioners has relied upon a judgment of the Hon'ble Supreme Court reported as **N.V. Srinivasa Murthy and others v. Mariyamma (dead) by proposed LRs and others** 2005(3) RCR (Civil) 414.

I have heard learned counsel for the petitioners. However, I

find no force in the contentions raised by him.

Admittedly, the defendant-petitioners issued cheque dated 24.3.2005 which was got encashed by the plaintiff-respondent in his account. It is also not disputed that the defendant-petitioners have also shown the debit of the plaintiff in their income-tax return for the year ending on 31.3.2004. In the plaint, the plaintiff-respondent has clearly averred that there is an open, current and mutual account between the parties to the suit.

It is useful to refer to Article 1 of the Limitation Act which reads as under:

“Article 1, in the case of SUIT for the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties provides for LIMITATION in following manner:

Three years from the close of the year in which the last item admitted or proved is entered in the account, such year to be computed as in the account.”

Article 1 of the Limitation Act provides three years limitation to file a suit in a case of mutual and open account between the parties, from the close of the year in which the last item admitted or proved is entered in the account. Thus, taking the starting point from 24.3.2005 i.e. date of cheque, the suit is within limitation as it is alleged in the plaint that there is an open and mutual account between the parties. Order 7 Rule 11(d) CPC provides that a plaint can be rejected where a suit appears, from the statement in the plaint, to be barred by any law. However, keeping in view the aforesaid averments made in the plaint, the same cannot be rejected outrightly. Thus, in the present case, a mixed question of law and facts is

involved as to whether the defendants have issued the cheque on 24.3.2005 and also mentioned the debit of the plaintiff in the income-tax return for the year ending on 31.3.2004 and that parties were having mutual and open account which can only be decided after adducing of the evidence. The case law submitted by the petitioners is not applicable in the present facts and circumstances of the case, as the matter which was involved in Mariyamma's case (supra) was purely a question of law, whereas in the present case, a mixed question of law and facts is involved and therefore, the plaint cannot be rejected at this juncture.

In view of these facts, there is no merit in this revision petition and the same is dismissed.

January 29, 2009
ps

(RAKESH KUMAR GARG)
JUDGE