



In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6148 of 2023

Date of Decision: 10.02.2025

Rohit Maini and Another

... Appellant(s)

Versus

Gurminder Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Naresh Kaushal and Mr. Nitish Kaushal, Advocates
for the petitioner(s).

Mr. Dhiraj Jindal, Advocate
for the respondents.

Anil Kshetarpal, J.

I. Factual Background

1. This revision petition has been filed by the plaintiffs to assail the correctness of the deemed decree passed by the Trial Court while rejecting their plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") on 11.08.2023.

2. The plaintiffs filed a suit for specific performance of the agreement to sell dated 07.12.2004. They asserted that there was no recital for performance of the agreement to sell and the sale deed was to be executed after Manmohan Singh was declared owner of the property and was allotted the property. The plaintiffs were handed over all the documents relating to the property and were put in possession. Manmohan Singh executed registered Will and a general power of attorney in favour of the

plaintiffs on same day i.e. 07.12.2004. Manmohan Singh filed a suit for the grant of decree of mandatory injunction directing the plaintiffs to handover the allotment letter etc. of the suit property which was dismissed on 31.07.2017. Thereafter, the plaintiffs filed the suit on 03.08.2018. The defendants filed an application for rejecting the plaint under Order VII Rule 11 CPC which has been allowed. The Trial Court has dismissed the suit on the ground that it was filed beyond the period of limitation.

II. Submissions put forth by the learned counsel representing the parties

3. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

4. The learned counsel representing the petitioners submits that without granting an opportunity to the petitioners to prove their case, the Court has dismissed their suit. He further submits that in the plaint, the plaintiffs have asserted that the cause of action accrued in their favour on 10.08.2017, whereas the suit was filed in August 2018.

5. Per contra, the learned counsel representing the respondents submits that notice of the previous suit is sufficient to infer refusal on the part of the defendants.

III. Analysis and Discussion

6. This Court has considered the submissions of the learned counsel representing the parties.

7. Article 54 of the Limitation Act, 1963 (hereinafter referred to as “the 1963 Act”) provides the limitation period of three years from the date fixed for performance, or, if no such date is fixed, then from the date the plaintiff has notice that the performance has been refused. In this case, no

date was fixed in the agreement to sell. Hence, part 2 of the Column No. 3 of Article 54 of the 1963 Act would be applicable. Consequently, it is for the defendants to prove that the plaintiffs had notice from the defendants that the performance is refused by the defendants. The aforesaid fact is required to be proved by leading evidence. Moreover, at the stage of application under Order VII Rule 11 CPC, only the averments of the plaint are required to be examined.

IV. Decision

7. Keeping in view the aforesaid facts, the present revision petition is allowed and the impugned order is set aside. The Trial Court is directed to restore the suit to its original number and proceed with the matter. The parties, through their learned counsel, are directed to appear before the Trial Court on 10.03.2025.

**(Anil Kshetarpal)
Judge**

February 10, 2025

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No