

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****138****CR-2428-2025(O&M)****Date of decision: 24.04.2025****Harsh Kumar****...Petitioner(s)****Vs.****Punjab Agro Industries Corporation Limited****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. N.K. Manchanda, Advocate
for the petitioner.

Mr. Ranjit Singh Kalra, Advocate
for the respondent.

NIDHI GUPTA, J.

Present petition has been filed by the defendant against the order dated 24.03.2025 (Annexure P4) whereby application (Annexure P1) filed by the petitioner under Order 7 Rule 11 CPC for rejection of plaint, has been dismissed by the learned trial Court.

2. Learned counsel for the petitioner submits that the respondent/plaintiff Corporation had filed a suit against the petitioner for recovery of Rs.3,34,576/- based on alleged losses caused to the plaintiff during wheat procurement in the crop year 2017-18. It is submitted that for the said alleged losses, charge-sheet was issued to the petitioner in December, 2017; however, the suit for recovery was filed almost six years



thereafter on 31.08.2023. It is contended that accordingly, suit of the plaintiff was barred by limitation; and therefore, deserved to be rejected under Order 7 Rule 11(d) CPC on ground of limitation. In support of his contentions, learned counsel for the petitioner relies upon judgment of Hon'ble Supreme Court in **"C.S. Ramaswamy Vs. V.K. Senthil & Others"** Law Finder Doc ID # 2042293; and judgment of this Court in **"Bank of Baroda Vs. Shri A.K. Sharma & Others"** Law Finder Doc ID # 222405 wherein it has been held that limitation will apply from date of knowledge of fraud.

3. Learned counsel appearing on behalf of the respondent Corporation opposes the prayer made on behalf of the petitioner and submits that although charge-sheet was issued on 30.12.2017 about the embezzlement and theft and losses caused by the defendant to the plaintiff, however, the exact extent of losses could only be determined by the plaintiff after detailed departmental inquiry. It is submitted that extent of losses was determined only vide order dated 2.9.2020; and therefore, limitation would apply from said date; and the suit was filed within limitation on 31.08.2023.

4. No other argument is made on behalf of the parties.

5. I have heard learned counsel for the parties and perused the case file in great detail.

6. I find no merit in the submissions made on behalf of the petitioner. Record reveals that the petitioner was appointed as Clerk-cum-



Typist in the respondent-Corporation on 03.01.1995. Shortage of wheat crop was detected for the crop year 2017-18. Vide order dated 17.06.2017, a committee of 4 persons was constituted by the Manager of the respondent-Corporation to inquire into the said shortage pursuant to which, charge-sheet dated 30.12.2017 was issued to the petitioner. To quantify the losses caused to the respondent/plaintiff Corporation, an inquiry was conducted in the matter by retired Additional District and Sessions Judge in respect of which report dated 25.04.2019 was received. After this, considering the principles of natural justice, show cause notice was given to the defendant on 26.06.2019. The defendant had submitted his reply to the said show cause notice, pointing out that as per charge-sheet and inquiry report an amount of Rs.4,03,059/- was to be recovered from the defendant; whereas amount of Rs.68,483/- had already been received by the Department from the sale of damaged wheat which amount should not be recovered from the defendant. After considering this reply of the defendant, final Office Order dated 03.01.2020 for recovery of Rs.3,34,576/- was passed. Against this Office Order dated 3.1.2020, the defendant had filed Appeal, which was rejected by the Appellate Authority i.e. Board of Directors vide order dated 02.09.2020; whereafter, the present suit came to be filed on 31.08.2023. Clearly, therefore, limitation would count from passing of order dated 02.09.2020; and present suit was within limitation.



7. The suit (Annexure P1) was filed by the respondent on 31.08.2023. Present “Application under Order 7 Rule 11 CPC for rejection of plaint as the suit is time barred” was filed by the petitioner on 27.11.2024 (Annexure P2). The respondent filed reply dated ‘Nil’ (Annexure P3) to the said application. Vide impugned order dated 24.03.2025 (Annexure P4), the said application of the petitioner has been dismissed. Relevant observations of the learned trial Court in Para 4 thereof are as follows:-

“4. After hearing learned counsel for the parties and perusal of record, it shows that present suit is filed by plaintiff for recovery of amount against defendant with version that defendant has been responsible for causing loss to plaintiff concern. Plea of plaintiff is that defendant performed his duty negligently and with irresponsibility with regard to wheat stock lying at JCT Open Plinth, Bahrowal for the crop year 2017-18, which remained in custody/supervision of defendant till the registration of the FIR No.44 dated 29.05.2017, under Sections 380, 409, 411 and 120-B of IPC, registered at P.S. Behram, District SBS Nagar. Defendant has appeared on 03.11.2023 and instead of filing written statement, he filed an application under Order 11 Rule 14 CPC for supplying documents to him. Said application was not pressed upon and defendant was directed to file written statement, vide order dated 07.11.2024. Thereafter, present application was filed on 27.11.2024 for rejection of the plaint with averments that present suit itself is time barred. It is plea of the plaintiff that defendant was employed by Punjab Agro Industries Corporation Limited and was on deputation with Punjab Agro Food Grain Corporation Limited. His second plea is that plaintiff has claimed shortage of wheat crop pertaining to year 2017-18 and alleged loss was in the knowledge of Corporation on 30.12.2017 and present suit is filed after expiry of period of 05 years and 08 months. Plaintiff has pleaded that amount of loss was finalized when appeal filed by defendant, was dismissed on 02.09.2020. Above



said facts shows that plea raised by both the parties with regard to filing of present suit within limitation can be decided only after appreciation of evidence to be lead by the parties. Defendant has not put forward any defence till today from the day of his appearance. In view of these circumstances, this Court considers that present application is without merits at this stage and is dismissed.”

8. The petitioner can derive no benefit from the relied upon judgments as the same are distinguishable on law and facts. In the relied-upon judgment in case of **C.S. Ramaswamy (supra)**, the impugned Sale Deeds were executed in the year 2005; whereas suit was filed in the year 2016 i.e. after more than 10 years. In the said case, it had been pleaded by the defendant/appellant that the plaintiffs were very much in the knowledge of the said Sale Deeds as some of the original plaintiffs had previously also filed a suit in respect of the same Sale Deeds, which came to be dismissed in 2014; and therefore, the plaintiffs could not state in the present suit filed in the year 2016 that they were not having knowledge of the respective Sale Deeds. It has accordingly been sought to be contended by learned counsel for the petitioner that limitation would count from date of discovery of fraud. In the present case, no doubt charge-sheet was issued by the plaintiff to the petitioner in the year 2017, however, quantification of the amount recoverable from the defendant was made only vide order dated 02.09.2020. As such, limitation would not apply from 2017 but would apply from 02.09.2020.



9. Furthermore, it is an established position in law that at the stage of deciding an application under Order 7 Rule 11 CPC, only the averments made in the plaint are to be seen. The Hon'ble Supreme Court in numerous judgments including **"Eldeco Housing and Industries Ltd. Vs. Ashok Vidyarthi & Others"** Law Finder Doc ID # 2406865, has repeatedly held that no evidence or merits of the controversy can be examined at the stage of deciding rejection of a plaint in an application under Order 7 Rule 11 CPC; and that only the averments made in the plaint would be relevant for invoking Order 7 Rule 11 CPC. In **"Kamala & Others Vs. K.T. Eshwara Sa & Others"** 2008 (12) SCC 661, it is held that in an application under Order 7 Rule 11 CPC, no evidence can be looked into; issue on merits of the matter would not be within the realm of the Court at that stage; and the Court would not decide any evidence or disputed question of fact or law. Reference may also be made to three-Judge Bench judgment of Hon'ble Supreme Court in **"Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Others"** Law Finder Doc ID # 1865777, wherein it has been categorically held that *"...In order to reject a plaint for the suit being barred by any law under Order 7 Rule 11(d), the court needs to be guided by the averments in the plaint and not the defence taken."* It has been categorically held that the grounds taken by the defendant as defence cannot be taken into account while rejecting a plaint under Order 7 Rule 11 CPC. Relevant part of the said judgment is as under:-



“16. Order 7 Rule 11(d) of CPC provides that the plaint shall be rejected "where the suit appears from the statement in the plaint to be barred by any law". Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Court while deciding such an application must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case....”

10. Clearly, therefore, for invoking Clause (d) of Order 7 Rule 11 CPC, only the averments made in the plaint are relevant and for that purpose there cannot be any addition or subtraction; averments in the written statement are immaterial; and it is the duty of the Court to scrutinise the pleas in the plaint and the matter is to be decided only on the plaint averments. Moreover, limitation is a mixed question of law and fact and would require evidence.

11. In view of the above, present petition is **dismissed**.

12. Pending application(s) if any also stand(s) disposed of.

24.04.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No