

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-3692-2016 (O&M)****Date of Decision : 15.09.2025**

Jamshed Mohd. @ Zimmi and Others ... Petitioners

Versus

Sagiran and Another ... Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Anil Kumar Garg, Advocate for the petitioners.

Mr. Sparsh, Advocate for

Mr. Ashok Bhardwaj, Advocate for the respondents.

**ALKA SARIN, J. (Oral)**

1. Present revision petition has been filed challenging the order dated 14.03.2016 dismissing the application filed by the petitioners herein under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the plaint on the ground that the suit is barred by limitation.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondents herein filed a suit for damages for recovery of ₹10,00,000/- by way of compensation on the ground of death of their daughter, namely, Farzana and further for causing damages to the plaintiff-respondents in the litigation/trial. An application was filed by the defendant-petitioners herein for rejection of the plaint under Order VII Rule 11 CPC on the ground that the same was barred by limitation. Reply was filed to the said application. Vide the impugned order dated 14.03.2016 the said application was dismissed.

Hence, the present revision petition.

3. Learned counsel for the defendant-petitioners would contend that in the present case the limitation would commence from the date the daughter of the plaintiff-respondents was murdered and not from the date of the judgment of conviction and therefore the suit is clearly barred by limitation.

4. *Per contra* learned counsel for the plaintiff-respondents would contend that the limitation in the present case would be a mixed question of law and facts as it is to be determined as to whether the suit would be treated as a suit under the Fatal Accidents Act, 1855 or would be treated as a simpliciter suit for damages.

5. Heard.

6. The only ground on which the application under Order VII Rule 11 CPC was pressed was that the suit itself was barred by limitation. It is trite that while deciding an application under Order VII Rule 11 CPC only the contents of the plaint along with any document filed with the plaint are to be seen. Neither the written statement nor the averments made in the application can be considered for rejection of the plaint under Order VII Rule 11 CPC. While exercising the powers under Order VII Rule 11 CPC, the Court has to determine as to whether a case for rejecting the plaint at the very threshold is made out. On a meaningful reading of the plaint if it is found that the same is vexatious or is clearly barred by limitation, the Court would exercise its powers under Order VII Rule 11 CPC. The Hon'ble Supreme Court in the case of **Salim D. Agboatwala vs. Shamalji Oddhavji Thakkar & Ors. [(2021) 17 SCC 100]** has held as under :

*“8. Insofar as the rejection of the plaint on the ground of limitation is concerned, it is needless to emphasise that*

*limitation is a mixed question of fact and law. It is the case of the appellant-plaintiffs that only after making inspection of the records in connection with the suit land available in the office of Defendant 3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before ALT were collusive, fraudulent and null and void. The appellant-plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.”*

7. In the case of **Chotanben & Anr. vs Kiritbhai Jalkrushnabhai Thakkar & Ors. [2018 (5) RCR (Civil) 163]** the Hon’ble Supreme Court held as under :

“12. *What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants*

*(plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.”*

8. Further, in the case of **Urvashiben & Anr. vs Krishnakant Manuprasad Trivedi [2019 (1) RCR (Civil) 366]** it has been held as under:

*“15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. 14 (2009) 5 SCC 462 15 (2006) 5 SCC 658 C.A.@ SLP(C)Nos.23062-63/18 Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC.”*

9. In the present case the question of limitation would be a debatable question which can only be answered after a requisite issue has been framed and evidence is led. It cannot be, at this stage, said that the suit is clearly barred by limitation and hence the plaint be rejected under Order VII Rule 11 CPC.

10. In view of the above, the present revision petition is dismissed. The Trial Court would frame a requisite issue and decide the same in

accordance with the law. Pending miscellaneous applications, if any, also stand disposed off.

15.09.2025  
jk

**( ALKA SARIN )**  
**JUDGE**

NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO