



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

204

**Civil Revision No.5791 of 2022 (O & M)**

**Date of decision :-02.09.2025**

**Rajinder Pal Garg and another**

**.....Petitioners**

**Versus**

**Kewal Kishore and others**

**.....Respondents**

**CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vivek Suri, Advocate with  
Mr. Dushyant Godara, Advocate  
for the petitioners.

**NIDHI GUPTA J. (Oral)**

Prayer in the present revision petition is for setting aside the order dated 14.9.2022 (Annexure P-4) passed by the learned Civil Judge (Jr. Divn.), Kalka in case Civil Suit No.269 of 2021 titled as "Kewal Kishore vs. Rajinder Pal Garg and others" whereby the application filed by the petitioners under Order 7 Rule 11 CPC has been dismissed.

It is *inter alia* submitted by learned counsel for the petitioners/defendants that vide impugned order dated 14.9.2022 (Annexure P-4) the application of the petitioners under Order 7 Rule 11 CPC has been dismissed without appreciating the fact that in the plaint it is the own averment of the plaintiff-respondent No.1 that the petitioner and the respondent had entered into an oral Agreement to Sell dated 15.12.2002. It is submitted that the suit of the plaintiff was



clearly barred by limitation as against the said oral Agreement dated 15.12.2002 the plaintiff had filed the civil suit in the year 2021. However, the learned trial Court has failed to appreciate this fact which is apparent from a bare reading of the plaint (Annexure P-1).It is accordingly prayed that the impugned order 14.9.2022, be set aside.

Heard.

Perusal of the record shows that notice in the present case was issued by a co-ordinate Bench vide order dated 08.12.2022, whereupon further proceedings before the learned trial Court were also directed to be stayed. As per the office report received, notice issued to respondent No.1 was received back served, however, none appeared on his behalf. Accordingly, vide last order dated 31.1.2025 fresh notice was issued to respondent No.1; in respect of which, the following office report has been received "*not met at the time of service of summon. Son met and he refuse to receive the summon. However, affixation made*". This is valid service. However, clearly, despite having been served twice, respondent No.1 is choosing not to put in appearance. Therefore, the present petition is being decided in his absence.

Brief facts of the case are that the plaintiff has filed civil Suit dated 13.9.2021 (Annexure P-1) seeking specific performance of the oral agreement to sell dated 15.12.2002, whereby the petitioners/defendants no.1 and 2, are stated to have sold the suit plots to the plaintiff for total sale consideration of ₹6 lakhs out of which ₹75,000/- is alleged to have been paid to the defendant no.1 at time of entering into the said oral agreement. In the said suit, the petitioners



had filed application dated 30.9.2021 (Annexure P-2) under Order 7 Rule 11 CPC seeking rejection of the plaint inter-alia on ground of limitation as also that the plaint did not disclose any cause of action. The plaintiff had filed reply dated 26.11.2021 (Annexure P-3), to the said application. Vide the impugned order dated 14.9.2022 (Annexure P-4), the said application of the petitioners has been dismissed by the learned trial court on the ground that only the contents of plaint are to be seen; and para 14 of the plaint specifically stated that cause of action arose to the plaintiff in 2021. The learned trial court further observed that the question as to whether the suit is barred by limitation, is a mixed question of fact and law.

I find the above said reasoning of the learned trial court to be erroneous, and without application of judicial mind.

In the Civil Suit, the head-note reads as follows:

*‘Suit for decree of specific performance for directing the defendant No.1 to execute the sale deed in favour of the plaintiff on the basis of oral agreement to sell dated 15.12.2002 executed by defendant No.1 through their authorized representative i.e. defendant No.3 and 4 on 15.12.2002 of two plots measuring.....’*

In para 6 of the plaint (Annexure P-1) it is averred that: -

*“6. That due to the guidelines of the Government, the registry of the land was temporarily closed during 2003 being small plots. However, upon mutual understanding among the plaintiff and defendant no. 1, 3 and 4, the possession of the suit property was handed over to*



*the plaintiff on dated 10.10.2003 as the earnest money of Rs. 75,000/- was already paid to defendant no. 1, through his authorized representatives/agents i.e. defendant no. 3 and 4, at the time of execution of agreement to sell dated 15.12.2002 and the plaintiff thereon possessed the suit property by keeping his building material on the suit property. Thereafter, the registry of the land reopened in the year 2007, the plaintiff again requested the defendant no. 1, 3 and 4 to get the sale deed executed, for the suit property registered in the office of Sub Registrar Kalka, in the name of plaintiff. However, the defendant no. 1, on one pretext or the other started avoiding his part of performance as per the oral agreement to sell dated 15.12.2002 and further told the plaintiff that the plaintiff is the deemed owner of the suit property and the defendant no. 1 will get the sale deed executed as and when the defendant no. 1 becomes available after tending the affairs of the business and family. The plaintiff, in utmost good faith and close family relations, left the matter of execution of the sale deed and registration of the sale deed of the suit property upon defendant no. 1, 3 and 4.”*

In para 14 of the plaint, the plaintiff has again acknowledged “*That the cause of action has arisen to the plaintiff firstly in the year 2002 i.e. 15.12.2002, when after the execution of the oral agreement to sell, which was got executed/agreed by the defendant no.1 through defendant no.3 and 4 and ₹75,000/- was received as earnest money by defendant no.1 .....*”



It is undisputed, established position of law that in an application under Order 7 Rule 11 CPC the Court is only required to peruse the plaint; and cannot look at any material beyond the plaint, not even the written statement. In the present case, without advertent to any other material on record, only upon a bare reading of the above averments made in the plaint it is clearly established that the suit of the plaintiff is barred by limitation. By way of the Civil suit dated 13.9.2021, the plaintiff is seeking specific performance of the oral agreement dated 15.12.2002. It is settled law that limitation to file a suit is three years from the date of accrual of cause of action. It is the own case of the plaintiff that cause of action had first accrued to him on 15.12.2002. Clearly, therefore, suit is barred by limitation. Further, plaint does not even disclose as to in what manner/mode, at what place, in the presence of which people, was payment of earnest money of ₹75,000/- made to defendant no.1. It can therefore be said, that only an illusion has been created by the plaintiff with regard to cause of action as there is no clear right to sue.

Therefore, the present revision petition is **allowed**, and the impugned order dated 14.9.2022 (Annexure P-4) is hereby set aside.

Pending application(s), if any, shall stand disposed of.

September 02, 2025

Vijay Asija

( **NIDHI GUPTA** )  
**JUDGE**

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No