**(2014) 11 P&H CK 0180**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Revision No. 580 of 2013 (O&M)

Hardyal Mal Jagdish Mal and Others APPELLANT

Vs

Avichal Handloom Industries RESPONDENT

**Date of Decision :** 28-11-2014

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Limitation Act, 1963 — Section 21

**Citation :** (2015) 177 PLR 795

**Hon'ble Judges :** Rakesh Kumar Jain, J

**Bench :** Single Bench

**Advocate :** Ashwani Talwar, Advocates for the Appellant; Sachin Mittal, Advocates for the Respondent

## Judgement

Rakesh Kumar Jain, J.—This petition assails the order dated 13.12.2012, allowing the application of the plaintiff, filed under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in for short, ''the C.P.C.'') to amend memo of plaint to replace the earlier plaintiff, namely Jang Bahadur son of Jyoti Parshad with M/s. Avichal Handloom Industries, through its Karta Jang Bahadur son of Jyoti Parshad. Brief facts of the case are that a suit for recovery of Rs. 5,66,629/- along-with interest @ 18% per annum from 313.2008 till its realisation was filed by Jang Bahadur son of Jyoti Parsad against the present petitioners, alleging therein that the defendants had obtained a loan of Rs. 5,00,000/- in two installments of Rs. 2.5. lacs each on 28.1.2005 and 31.1.2005. Thereafter, an agreement was reduced into writing on 31.3.2008 signed by both the parties i.e. Jang Bahadur and the defendants as per which the defendants had to return the aforesaid amount with 18% interest per annum. It is alleged in the plaint that since the defendants did not return the amount of loan alongwith interest despite legal notice, suit had to be filed and in para No. 8 of the plaint, it is mentioned that cause of action to file the suit arose to the plaintiff on 31.3.2008 when the agreement was reduced into writing. Admittedly, the suit was filed on 05.2.2011. As per the petitioners, written statement was filed by them on 16.5.2011 and on the same date, issues were framed.

2. The plaintiff had tendered affidavits of two witnesses, namely PW-1 and PW-2 on 23.2.2012 and thereafter the case was fixed for their examination by the petitioners.

3. On 28.8.2012, the plaintiffs filed an application under Order 6 Rule 17 of the C.P.C. for amendment of the plaint to change the title of the suit alleging that the amount was advanced by M/s. Avichal Handloom industries.

4. The application was contested by the defendants but it has been allowed by the trial Court on the ground that the petitioners would not suffer any prejudice as nature of the suit would remain the same and the effect of amendment would be considered when evidence is led by both the parties.

5. Learned counsel for the petitioners has submitted that the amendment allowed by the Court below is an error in exercise of its jurisdiction because the amendment application was allowed on 13.12.2012 but by that time, suit filed by M/s. Avichal Hand-loom Industries had already become time barred. He has referred to Section 21 and Article 21 of the Limitation Act, 1963. It is also submitted that since the plaintiff has been allowed to be changed by the order of the Court dated 13.12.2012 as against the cause of action accrued on 31.3.2008, the suit filed by the plaintiff is clearly barred by limitation because according to Article 21 of the Act, limitation is three years from the date when the loan is advanced. In support of his contention, learned counsel for the petitioners has relied upon the following judgments:-

6. Shiv Gopal Sah @ Shiv Gopal Sahu Vs. Sita Ram Saraugi and Others, : T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board and Others, ; Vinod Guru and another v. Parul Soni, 2012 (4) M.P.H.T. 202; Om Parkash v. Darshan Singh, 2003 (4) R.C.R. (Civil) 845 ; Ram Prasad Dagduram Vs. Vijay Kumar Motilal Mirakhanwala and Others, and Kamlesh Saini and others v. Girdhari Lal and others (2008-2) 150 PLR 765.

7. It is contended by the learned counsel for the petitioners that the trial Court cannot allow the amendment which bars the remedy of the plaintiff to maintain the suit because the firm comes on the scene for the first time on 31.12.2012 as against the cause of action accrued on 31.3.2008, therefore, there was no right to amend the suit which is clearly barred by limitation.

8. On the other hand, learned counsel for the respondents has relied upon the following judgments in support of his contention:-

9. Ragu Thilak D. John v. S. Rayappan, 2001 (1) R.C.R. (Civil) 726 ; T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board and Others, and Puran Ram v. Bhaguram and another, 2008 (2) R.C.R. (Civil) 499.

10. It is submitted by the learned counsel for the respondent that proviso to Section 21 of the Limitation Act provides that where the Court is satisfied that

the omission to include a new plaintiff or defendant was due to a mistake made in good faith, it may direct that the suit as regards such plaintiff or defendant be deemed to have been instituted on an earlier date.

11. I have heard learned counsel for the parties and after examining the record, am of the considered opinion that this petition deserves to succeed.

12. To begin with, it would be relevant to refer to Section 21 and Article 21 of the Limitation Act, which read as under:-

"21. Effect of substituting or adding new plaintiff or defendant.-(1) Where after the institution of a suit, a new plaintiff, or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party;

Provided that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff".

Article 21-For money lent under an agreement that it shall, be payable on demand.- Three years when the loan is made.

13. According to Section 21 of the Limitation Act, where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall be deemed to have been instituted when he was made a party. However, this provision suggests that if there is an omission on the part of a party, who did not include the new plaintiff or the defendant and it was found by the Court to be a mistake made in good faith, the Court can always direct that the said omission on the part of the plaintiff or the defendant shall be deemed to have been excluded and the suit shall be deemed to have been filed on an earlier date. In this case, agreement was reduced into writing on 31.3.2008 and on that date, the amount of loan was paid by the plaintiff to the defendants. Since the amount of loan was not returned, the plaintiff filed the suit, making the agreement as the base for the cause of action to sue the defendants for recovery of the said amount. Admittedly, the suit filed by the plaintiff on 05.2.2011 was within limitation but the new plaintiff has come on the scene by virtue of application, moved under Order 6 Rule 17 of the C.P.C. and the said application to allow him to pursue the suit was allowed vide order dated 13.12.2012 as against the cause of action on 31.3.2008. If the limitation is to be counted from the date when the amount of loan is paid as per Article 21 of the Act, it would be three years as the limitation had started on 31.3.2008 and the suit could have been filed up to 31.3.2011. Had it been so, then the trial Court should have recorded its

 

satisfaction regarding the omission on the part of the plaintiff with a clear finding as to what was the mistake committed in good faith. Since there is no finding recorded by the trial Court and application for amendment has been allowed on the ground that no prejudice is going to be caused to the defendant if the plaintiff is changed mid way of the suit, the plaintiff cannot be allowed to take the benefit of the proviso of Section 21 of the Act.

14. It is needless to mention that the suit filed is time barred and cannot be revived by way of amendment. All the judgments relied upon by the learned counsel for the petitioners and the respondents are not required to be dealt with in detail in view of the bare provisions of the Act which have already been discussed here-in-above. In view of the aforesaid discussion, the order of the trial Court is patently erroneous and hence this revision petition is hereby allowed and the impugned order is set aside.

 