
(1984) 08 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3335 of 1983

Jagdish Rai

APPELLANT

Vs

Ujagar Singh

RESPONDENT

Date of Decision : 09-08-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1
Limitation Act, 1963 — Section 17

Citation : AIR 1985 P&H 57

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Judgement

1. The petitioner filed an application under O. XXXIII R. 1, Civil P. C. (hereinafter called the Code) on December 24, 1981, in the trial Court seeking permission to sue the respondent, Ujagar Singh, as an indigent person, for the recovery of Rs. 14,707/- on the basis of the pro note and the receipt, which the respondent had allegedly executed in his favour on July 18, 1977. Explaining the delay in the filing of the application, the petitioner had alleged in para 15 of the application, that the pro note and the receipt had been misplaced soon after the execution and had been discovered on December 6, 1981. That application was contested by the respondent who claimed that the petitioner was not an indigent person. However, after the parties were allowed to lead evidence, the learned trial Court found that the petitioner was not an indigent person. Aggrieved against the same, the petitioner filed an appeal in the Court of the District Judge, Ludhiana. The appellate Court reversed the said finding of the trial Court and came to the conclusion that there was no evidence to the effect that the petitioner was possessed of sufficient means to pay the court fee. However relying upon the provisions of O. XXXIII R. 5(f) of the Code, it found that since the allegations made in the application clearly made out that the suit was barred by limitation, the petitioner was not entitled to sue as an indigent person. In view of this finding, the order of the trial Court dismissing the application for permission to sue as an indigent person was maintained. Dissatisfied with the same, he has

filed this petition in this Court.

2. The learned counsel for the petitioner contended that Clause (f) of R. 5, O. XXXIII of the Code, was not attracted to the present case because in the application to seek permission to sue as an indigent person, the allegations have been made as to how the suit was within time keeping in view of the provisions of S. 17 Limitation Act. In any case, argued that learned counsel, prima facie from the allegations made in the application, it could not be said that the suit was barred by limitation. It was a matter to be enquired into after the necessary permission to sue as an indigent person was granted.

3. After hearing the learned counsel for the parties, I find force in the contention raised on behalf of the petitioner, Clause (f), R. 5, O. XXXIII of the Code which provides that where the allegations made by the applicant in the application show that the suit would be barred by any law for the time being in force, the Court shall reject the application for permission to sue as an indigent person, is not at all attracted to the present case because admittedly, in para 15 of the application for permission to sue as an indigent person, allegations have been made to show that the suit was within limitation in view of the provisions of S. 17 Limitation Act. That being so, the approach of the appellate Court, in this behalf was wrong and illegal. Besides that is a matter yet to be gone into and on the allegations made, it could not be held that the suit as such was barred by time.

4. In this view of the matter, this petition succeeds and is allowed. The orders of the Courts below are set aside and the petitioner is allowed to file the suit as an indigent person. The parties have been directed to appear in the trial Court on August 30, 1984.

5. Petition allowed.