
(2012) 03 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Case No. C.R. No. 2234 of 2011

Mohinder Parkash

APPELLANT

Vs

Azad Hind Oil Company, Kaithal

RESPONDENT

Date of Decision : 23-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 5
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Article 22, 7, 17

Citation : (2012) 03 P&H CK 0004

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Sandeep Goyal, for the Appellant; Atul Gaur, Advocate for M. Sumeet Goel, for the Respondent

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Mohinder Parkash has filed this revision petition under Article 227 of the Constitution of India after he failed in both the courts below to seek permission to file suit as indigent person under Order 33 of the CPC (in short - CPC). The petitioner pleaded that he remained in service of respondent w.e.f. 12.06.1997 till 10.09.2004 and he received part wages from the defendant-respondent and the remaining amount of his wages remained deposited in the account books of the defendant-respondent in the name of petitioner to be paid as and when required by the petitioner, along with interest @ 18% per annum. The petitioner accordingly claimed the balance amount of his wages for the aforesaid period amounting to Rs. 3,92,500/-along with interest thereon @ 18% per annum amounting to Rs. 4,20,945/-thereby claiming total amount of Rs. 7,63,445/-. The petition for leave to file the suit as indigent person under Order 33 CPC was filed on 21.08.2007. The petitioner alleged that he had no means to pay the requisite court fee.

2. Learned Additional Civil Judge (Senior Division), Kaithal, vide order dated

13.11.2009 (Annexure P-3), rejected the application of the petitioner for permission to sue as indigent person and adjourned the case for payment of court fee. Appeal against the said order preferred by the petitioner has been dismissed by learned Additional District Judge, Kaithal, vide order dated 15.02.2011 (Annexure P-5). Both the aforesaid orders Annexures P-3 and P-5 of the courts below are under challenge in this revision petition.

3. I have heard learned counsel for the parties and perused the case file.

4. Counsel for the petitioner vehemently contended that the courts below have erred in holding that the suit filed by the petitioner is time barred and no such finding could be recorded while deciding petition under Order 33 CPC for filing the suit as indigent person and the question of limitation could be decided only at the time of final decision of the suit. Reliance in support of this contention has been placed on judgment of this Court in the case of Jagdish Rai Vs. Ujagar Singh, It was also submitted that the period of limitation commenced when on demand of the petitioner, defendant-respondent refused to pay the suit amount and computed accordingly, the suit filed on 21.08.2007 is within limitation.

5. On the other hand, counsel for the respondent contended that as per averments made in petition Annexure P-1, the suit is barred by limitation as limitation period was three years and the petitioner has claimed arrears of wages since June 1997 till 10.09.2004.

6. I have carefully considered the rival contentions.

7. Order 33 Rule 5(f) CPC lays down that the Court shall reject an application for permission to sue as indigent person, 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. Consequently, if from allegations made in petition Annexure P-1, it appears prima facie that the suit would be barred by limitation, then in view of Order 33 Rule 5(f) CPC, the application has to be rejected and petitioner has to be directed to pay court fee.

8. As noticed herein before, the petitioner in the suit has claimed arrears of wages since June 1997 to 10.09.2004. According to Article 7 of the Schedule to Limitation Act, period of limitation for filing suit for wages is three years and the limitation period begins to run when the wages accrued due. Consequently, prima facie, the suit regarding arrears of wages since June 1997 till 21.08.2004 is barred by limitation and only arrears since 22.08.2004 till 10.09.2004 roughly amounting to Rs. 6,700/-, as per petitioner's claim, would be within limitation, for which the petitioner can certainly pay court fee. However, for the balance amount, prima facie the petitioner's claim is time barred, and therefore, petitioner's application for permission to sue as indigent person has been rightly rejected under Order 33 Rule 5(f) CPC because prima facie, suit for the same appears to be barred by limitation. Article 22 of the Schedule to Limitation Act is not applicable to the instant case because the same applies to suit for money deposited under agreement that it shall be payable on demand. In the instant

case, however, the petitioner is claiming his wages allegedly lying deposited with the respondent. It may also be added that the petitioner in petition Annexure P-1 did not even claim as to when he, for the first time, made demand of the suit amount from the respondent because even under Article 22 of the Schedule to the Limitation Act, the limitation period begins to run when the demand is made. Petitioner in petition Annexure P-1 has pleaded that despite repeated requests and demands, the respondent did not admit the claim of the petitioner and finally refused on 11.09.2004. The petitioner alleged that cause of action arose on 11.09.2004, when final refusal was made. This plea is not acceptable because cause of action arose when demand was first made. Limitation period began to run even as per Article 22 of the Schedule to Limitation Act, when the first demand was made. When final refusal was made on 11.09.2004, it cannot be said it was the date on which first demand was made by the petitioner because the petitioner has stated that he made repeated requests and demands. In this view of the matter also, prima facie, it cannot be said that the suit would be within limitation for wages till 21.08.2004. Judgment in the case of Jagdish Rai (supra) is not applicable to the facts of the instant case because in that case, the petitioner pleaded benefit of Section 17 of the Limitation Act to claim the suit to be within limitation. In other words, in that case, limitation period commenced when the alleged fraud came to the notice of the petitioner. In the instant case, however, prima facie from allegations made by the petitioner, the suit is time barred for wages till 21.08.2004. In view of the aforesaid, I find that the petitioner's application for permission to sue as indigent person has been rightly rejected by the courts below under Order 33 Rule 5(f) CPC. There is, therefore, no perversity, illegality or jurisdictional error in the impugned orders of the courts below warranting interference by this Court in exercise of revisional jurisdiction. The revision petition is thus found to be meritless and is accordingly dismissed. The petitioner is permitted to pay court fee within two months from today in the trial court.