the Collector. Thus the period has to be counted from the date of notice, which has been sent on 12.5.2015 after about 7 years of the registration of the sale deed, which is clearly barred by limitation in terms of Section 47-A (3) of the Act as applicable to Punjab.

7. In view of the aforesaid, impugned notice dated 12.5.2015 is found to be totally illegal and arbitrary and hence the same is hereby quashed. Writ petition is allowed though without any order to costs.

Petition allowed.

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SUPREME COURT OF INDIA

Before: Kurian Joseph & A.M. Khanwilkar, JJ.

Civil Appeal No. 4080 of 2014 Decided on: 24.01.2017

Kuldeep Singh Pathania Appellants

Versus

Bikram Singh Jaryal Respondent

A. Code of Civil Procedure 1908 (V of 1908), Order 7 Rule 11(a), Order 14, Rule 2(2) -- Preliminary issue – Rejection of plaint -- Order XIV Rule 2 provides for disposal of a suit on a preliminary issue and under sub-Rule (2) of Rule 2, if the court is of opinion that a case or part thereof can be disposed of on an issue of law only, it may try that issue first, in case it relates to jurisdiction of the court or bar to entertaining the suit -- Whole purpose of trial on preliminary issue is to save time and money -- Though it is not a mini trial, the court can and has to look into the entire pleadings and the materials available on record, to the extent not in dispute -- But that is not the situation as far as the enquiry under Order VII Rule 11 is concerned.

(Para 6)

B. Code of Civil Procedure 1908 (V of 1908), Order 7 Rule 11(a), Order 14, Rule 2(2) -- Preliminary issue – Rejection of plaint -- For an enquiry under Order VII Rule 11 (a), only the pleadings of the plaintiff can be looked into even if it is at the stage of trial of preliminary issues under Order XIV Rule 2(2) -- But the entire pleadings on both sides can be looked into under Order XIV Rule 2(2) to see whether the court has jurisdiction and whether there is a bar for entertaining the suit.

(Para 8)

C. Code of Civil Procedure 1908 (V of 1908), Order 7 Rule 11(a), Order 14, Rule 2(2) -- Representation of the People Act, 1951 (43 of 1951), Section 83(1)(a) -- Preliminary issue – Rejection of plaint -- Issue relates to an enquiry under Order VII Rule 11(a) of the Code, and hence, there is no question of a preliminary issue being tried under Order XIV Rule 2(2) of the Code -- Court exercised its jurisdiction only under Section 83(1) (a) of the 1951 Act read with Order VII Rule 11(a) of the Code -- Since the scope of the enquiry at that stage has to be limited only to the pleadings of the plaintiff, neither the written statement nor the averments, if any,

filed by the opposite party for rejection under Order VII Rule 11(a) of the Code or any other pleadings of the respondents can be considered for that purpose.

(Para 9)

Cases referred:

1. Mayar (H.K.) Ltd. and others v. Owners & Parties, Vessel M.V. Fortune Express and others [(2006) 3 SCC 100].

2. Nath Gautam v. Satpal Singh and others [(2007) 3 SCC 617].

JUDGMENT

KURIAN, J. –

1. Chapter III of Part VI of The Representation of the People Act, 1951 (hereinafter referred to as "the Act") deals with trial of election petitions. Under Section 86(1) of the Act, "the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117". Section 100 of the Act provides for grounds for declaring election to be void. Section 100(1)(d)(iii) of the Act provides that an election of a returned candidate can be declared to be void if the High Court is of the opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected by the improper reception, refusal or rejection of any vote or the reception of any vote which is void. Section 81 provides for institutional requirements including limitation and Section 117 provides for deposit of security for costs. Section 83, under Chapter II, deals with contents of an election petition. Under Section 83(1)(a) of the Act, "an election petition shall contain a concise statement of material facts on which the petitioner relies". Under Order VII Rule 11(a) of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code"), a plaint shall be rejected where it does not disclose a cause of action and under Order XIV Rule 2(2), the court may deal with the preliminary issue on jurisdiction of the court and bar to the suit created by any law in force. These are the provisions relevant for consideration of the present case.

2. The appellant lost election from Bhattiyat Assembly Constituency of Himachal Pradesh Legislative Assembly held in 2012 by a margin of 111 votes. He filed an election petition mainly on the grounds under Section 100(1)(d)(iii) of the Act. Of the six issues settled, issues 2 to 5 were treated as preliminary issues, of which, issues 2 and 3 related to cause of action:

> "2) Whether the election petition is liable to be dismissed in limine for lack of material facts and particulars, as alleged?
>
> 3) Whether the election petition is not maintainable for want of any cause of action, as alleged?"

3. Appellant is aggrieved since his petition has been dismissed, based on the findings on the preliminary issues that the election petition lacked in material facts as required under Section 83(1)(a) of the 1951 Act and as such, did not disclose any cause of action.

4. As far as the averments in the election petition are concerned, it is not necessary for us to refer to the same in *extenso* since they have been

summarized in paragraph-27 of the impugned judgment, which reads as follows:

> "27. The "violations" alleged by the petitioner during poling and counting of votes can be grouped in the following three categories, which shall be dealt with one by one:-
>
> I. Exercise of dual right of franchise by a voter and discrepancy between the EVM record and the record maintained in Form 17-A at polling station No.92-Kamla;
>
> II. Improper reception of 30 postal ballot papers; and
>
> III. Discrepancy regarding 100 postal ballot papers-whether 597 or 697?"

5. The High Court dealt with the violations referred to above extensively so as to find out whether a cause of action is made out, but committed a grave error by considering the explanations offered in the replies filed by the respondents. All the three violations have been discussed meticulously by the High Court with reference to the replies furnished by the respondents and the court came to the conclusion that the petition did not disclose any cause of action since it lacked material facts. The High Court ventured into such an elaborate enquiry in the light of the pleadings in the replies, to see whether the result of the election has been materially affected, apparently or rather mistakenly, under Order XIV Rule 2.

6. Order XIV deals with settlement of issues and determination of suit on issues of law or on issues agreed upon. Order XIV Rule 2 provides for disposal of a suit on a preliminary issue and under sub-Rule (2) of Rule 2, if the court is of opinion that a case or part thereof can be disposed of on an issue of law only, it may try that issue first, in case it relates to jurisdiction of the court or bar to entertaining the suit. After the 1976 amendment, the scope of a preliminary issue under Order XIV Rule 2(2) is limited only to two areas, one is jurisdiction of the court, and the other, bar to the suit as created by any law for the time being in force. The whole purpose of trial on preliminary issue is to save time and money. Though it is not a mini trial, the court can and has to look into the entire pleadings and the materials available on record, to the extent not in dispute. But that is not the situation as far as the enquiry under Order VII Rule 11 is concerned. That is only on institutional defects. The court can only see whether the plaint, or rather the pleadings of the plaintiff, constitute a cause of action. Pleadings in the sense where, even after the stage of written statement, if there is a replication filed, in a given situation the same also can be looked into to see whether there is any admission on the part of the plaintiff. In other words, under Order VII Rule 11, the court has to take a decision looking at the pleadings of the plaintiff only and not on the rebuttal made by the defendant or any other materials produced by the defendant.

7. It appears, the High Court committed a mistake in the present case, since four out of the six issues settled were taken as the preliminary issues. Two such issues actually are relatable only to Order VII Rule 11 of the Code, in the sense those issues pertained to the rejection at the institution stage for lack of material facts and for not disclosing a cause of action. Merely because it is a trial on preliminary issues at the stage of Order XIV, the scope does not change or expand. The stage at which such an enquiry is undertaken by the

court makes no difference since an enquiry under Order VII Rule 11(a) of the Code can be taken up at any stage.

8. Thus, for an enquiry under Order VII Rule 11 (a), only the pleadings of the plaintiff-petitioner can be looked into even if it is at the stage of trial of preliminary issues under Order XIV Rule 2(2). But the entire pleadings on both sides can be looked into under Order XIV Rule 2(2) to see whether the court has jurisdiction and whether there is a bar for entertaining the suit.

9. In the present case, the issue relates to an enquiry under Order VII Rule 11(a) of the Code, and hence, there is no question of a preliminary issue being tried under Order XIV Rule 2(2) of the Code. The court exercised its jurisdiction only under Section 83(1) (a) of the Act read with Order VII Rule 11(a) of the Code. Since the scope of the enquiry at that stage has to be limited only to the pleadings of the plaintiff, neither the written statement nor the averments, if any, filed by the opposite party for rejection under Order VII Rule 11(a) of the Code or any other pleadings of the respondents can be considered for that purpose.

10. In **Mayar (H.K.) Ltd. and others** v. **Owners & Parties, Vessel M.V. Fortune Express and others**[1]**[**[1]**(2006) 3 SCC 100]**, this Court has dealt with a similar issue. To the extent relevant, paragraph-12 reads as follows:

> "*12***.** From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. …"

11. It is not necessary to load this judgment with other judgments dealing with this first principle of Order VII Rule 11(a) of the Code. As held by this Court in **Virender Nath Gautam** v. **Satpal Singh and others**[2] **[**[2]**(2007) 3 SCC 617]**, at paragraph-52:

> "*52***.** The High Court, in our considered opinion, stepped into prohibited area of considering correctness of allegations and evidence in support of averments by entering into the merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable and dismissed the petition. The said action, therefore, cannot be upheld and the order deserves to be set aside."

12. As we have been taken through the averments in the election petition

and we are satisfied that the petition has disclosed a cause of action, it is not necessary to remit the petition for a fresh enquiry in that regard.

13. The appeal is however allowed, the impugned order is set aside and the election petition is remitted to the High Court to try it on merits expeditiously, and being one filed in the year 2013, preferably within a period of four months. We make it clear that we have not expressed any opinion on the merits of the case.

14. There shall be no order as to costs.

Appeal allowed.

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PUNJAB AND HARYANA HIGH COURT

Before: Jitendra Chauhan, J.

CRM-A-1204-MA of 2014 (O&M) Decided on: 26.11.2015

Bhupinder Kumar Applicant

Versus

Balwinder Singh Respondent

Present: Mr. Y.S. Turka, Advocate for the applicant.

Mr. Kanwaljit Singh, Advocate for the respondent.

Negotiable Instruments Act, 1881 (26 of 1881), Section 138 – Code of Criminal Procedure, 1973 (2 of 1974), Section 378(4) -- Nothing on record to show that the applicant had advanced the amount in question to the respondent/accused -- Neither any receipt nor any authenticated document has been placed on record to substantiate his claim -- No document on record to show the legal liability of the respondent towards the applicant -- Allegations of the applicant appears to be vague -- In the circumstances, the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material on record -- Even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused.

(Para 6, 7)

Cases referred:

1. C. Antony Vs. K.G. Raghavan Nair, 2002(4) RCR (Criminal) 750.

JUDGMENT

JITENDRA CHAUHAN, J. (ORAL) –

1. By filing the present petition, under Section 378(4) of the Code of Criminal Procedure (for short 'Cr.P.C.'), the applicant has assailed the order dated 24.12.2013, passed by the Judicial Magistrate 1st Class, Dera Bassi, dismissing the complaint and acquitting the accused therein of the charges framed against him under Section 138 of Negotiable Instruments Act (for short 'the Act').

2. It is contended that the learned trial Court dismissed the complaint