(5) Viewing the case from another angle, it would be fair, even otherwise, to have the case tried at Chandigarh. Though it may be taken that the offence of criminal misconduct was committed at Chandigarh, yet it can perhaps legitimately be said that its consequences visited at places outside Chandigarh so as to attract the provisions of section 179 and 180 of the Code of Criminal Procedure. Without meaning to determine finally on this matter, it can at best be said that both Courts, i.e., at Ambala and Chandigarh have the jurisdiction. So, out of the two, it would be appropriate in the interest of justice to have the case tried before the Special Judge, Chandigarh.

(6) Thus, on account of both the above considerations, I am of the considered view that the trial of the petitioner shall be held before the Special Judge, Chandigarh. Accordingly, instead of ordering the challan to be returned by the Special Judge, Ambala to the Prosecutor for fresh presentation before the Special Judge, Chandigarh. I order its transfer to the Special Judge, Chandigarh. Parties through their counsel are directed to put in appearance before the learned Special Judge, Chandigarh, on 12th June, 1986.

H.S.B.

Before : *D. V. Sehgal, J.*

RAM KUMAR,—*Appellant.*

versus

CHELU RAM,—*Respondent.*

Second Appeal from Order No. 7 of 1986

May 14, 1986.

Code of Civil Procedure (V of 1908)—Order VI Rule 9 and Order VII Rules 11 and 14—Plaint filed along with a copy of the document relied upon—Said plaint rejected as not disclosing any cause of action as being premature—Averments made in the written statement—Whether can be considered before passing the order of rejection—Documents attached with the plaint—Whether can be considered for passing such an order—Order rejecting the plaint—Whether valid.

Held, that to find out as to whether a plaint discloses a cause of action or not, the Court has to look into the averments made in the plaint assuming them to be correct for the time being. It cannot depend on the averments made in the written statement or any other

evidence produced before it reaches at a conclusion that the averments made in the plaint are not correct and thus concludes that the plaint does not disclose the cause of action and reject the same under Order VII, Rule 11 of the Code of Civil Procedure, 1908. However, it has to be taken note of that Order VI, Rule 9 of the Code provides that wherever the contents of any document are material it shall be sufficient in any pleading to state the effect thereof in brief without setting out the whole or any part thereof. At the same time. Order VII Rule 14 of the Code provides that where the plaintiff sues upon a document in his possession or power he shall produce it in Court when the plaint is presented and shall at the same time deliver the document or a copy thereof to be filed with the plaint. The whole purpose of these provisions of the Code is that while the pleadings should be free from prolixity the document which forms the basis of the suit should be available with the plaint so as to be looked into to appreciate the averments contained therein. The document thus appended with the plaint becomes more or less a part of the plaint. To reject a plaint under Order VII, Rule 11 of the Code the Court right at the initial stage has to go through the contents of plaint and unaided by any defence has to form its view, on the basis of the plaint, whether it discloses the cause of action or not and the document relied upon by the plaintiff and accompanying the plaint are also to be considered for determining whether the cause of action had arisen or not. As such, the order of the Court rejecting the plaint was perfectly valid. (Paras 4, 5 and 9)

Second Appeal from Order of the Court of Shri K. C. Dang, Additional District Judge, Karnal, dated 3rd December, 1985 reversing that of Shri Inderjeet Mehta, HCS Sub-Judge, 2nd Class Panipat, dated 3rd September, 1985 and remanding the case to the Court of Shri Inderjit Mehta, learned Sub-Judge 2nd Class, Panipat for disposal as per the law and directing the parties to appear in the court concerned on 21st December, 1985.

C. B. Goel, Advocate, *for the appellant.*

O. P. Goyal, Advocate, *for the respondent.*

JUDGMENT

D. V. Sehgal, J.—

(1) Ram Kumar defendant-appellant mortgaged with possession a two and a half storeyed pucca Haveli with the plaintiff-respondent on 20th August, 1953 for a consideration of Rs. 1,000/-. The plaintiff filed a suit on 25th January, 1985 wherein reference to the mortgage deed dated 20th August, 1953 was made and it is not disputed at the

Bar that a copy of the same was also appended with the plaint. It was, however, averred therein that the defendant-mortgagor had not redeemed the property within 30 years and as a result the plaintiff had become its owner by efflux of time. A decree for declaration to this effect was prayed for in the suit. The defendant opposed the suit by filing a written statement wherein, inter-alia, it was alleged that a day earlier to the institution of the suit by the plaintiff, he had filed a suit for redemption of the mortgage which was pending in the court of Shri P. L. Khandooja, Sub-Judge, 1st Class, Panipat. It was also contended that he had the right to redeem the property within 5 years from the date of the mortgage by payment of the mortgage money, i.e., up to 20th August, 1958. Therefore, the prescribed period of 30 years of limitation for filing a suit for redemption by him was to start on 20th August, 1958, which had not expired. The suit was, therefore, pre-mature and it did not disclose any cause of action.

(2) On the pleadings of the parties, the learned trial Court framed the following preliminary issue:—

> "Whether the plaint does not disclose any cause of action? OPD."

Vide his judgment and decree dated 3rd September, 1985, the learned Sub-Judge IInd Class, Panipat, held as under:—

> "For the reasons recorded above, the cause of action shall accrue in favour of the plaintiff-mortgagee after 20th August, 1988 and on the date of filing the present suit, i.e., 25th January, 1985, no cause of action has accrued in favour of the plaintiff and hence the suit is rejected. Decree shall be prepared accordingly. File be consigned to the record-room."

(3) The plaintiff-appellant preferred an appeal which has been allowed by the learned Additional District Judge, Karnal,—*vide* judgment dated 3rd December, 1985. The judgment and decree of the learned trial Court were set aside and the case was remanded to it for disposal as per the law. The defendant-appellant thus being aggrieved has filed in this Court the present second appeal from order.

(4) The learned Additional District Judge placing reliance on some authorities held that under Order VII, rule 11, Code of Civil Procedure (hereinafter called 'the Code') the plaint could not be rejected if the same disclosed a cause of action. To find out as to whether a plaint discloses a cause of action or not, the Court has to look only into the averments made in the plaint assuming them to be correct for the time being . It cannot depend on the averment made in the written statement or any other evidence produced, before it reached at a conclusion that the averments made in the plaint is not correct and thus conclude that the plaint does not disclose a cause of action and reject the same under the aforesaid provisions of the Code. In my view, this position of law is unassailable.

(5) However, it has to be taken note of that as laid down in Order VI, rule 9, of the Code, wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof in brief without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material. At the same time, Order VII, rule 14 of the Code provides "that where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented and shall at the same time deliver the document or a copy thereof to be filed with the plaint. The wholesome purpose of these provisions of the Code is that while the pleadings should be free from prolixity the document which forms the basis of the suit should be available with the plaint so as to be looked into to appreciate the averments contained in the plaint. The document thus appended with the plaint becomes more or less a part of it."

(6) It has not been disputed before me that the mortgage deed which is the subject-matter of the dispute between the parties contains the following recital:—

> "IKRAR HUA KI KUL ZARE-REHAN MAI SUD BA SHARA EK RUPAYA SANKARA MAHAVAR ARSA PANCH SAAL MAIN ADA MURTEHIN KARKE MAKAAN MARHUNA FAK KARWALUNGA."

(7) An almost identical recital contained in the mortgage came up for consideration before the Privy Council in *Bakhtawar Begum*

(1) A.I.R. 1914 P.C. 36.

v. *Husaini Khanam* (1). In that case the mortgagor executed a mortgage by way of conditional sale in respect of 12 villages. A contemporaneous agreement was made by the mortgagee with the mortgagor that the latter may at any time within a period of 9 years claim back the property on payment of the amount of consideration. Allahabad High Court while interpreting this clause held that the debt remained outstanding for a period of 9 years and the right to redeem only accrued at the expiry of that period. While adverting to the interpretation so placed by the Allahabad High Court on the above covenant, their Lordships of the Privy Council observed:—

> "Ordinarily, and in the absence of a special condition entitling the mortgager to redeem during the term for which the mortgage is created, the right of redemption can only arise on the expiration of the specified period. But there is nothing in law to prevent the parties from making a provision that the mortgagor may discharge the debt within the specified period and take back the property. Such a provision is usually to the advantage of the mortgagor. In the present case, had the matter depended only on the construction of the contract as given in the proceeding of the Collector, much might be said in support of High Court's conclusions."

(8) The above view of the law in this respect taken by the Privy Council in *Bakhtawar Begum's case* (supra) has been approved by the Supreme Court in *Ganga Dhar* v. *Shankar Lal and others* (2), and has been recently followed by S. P. Goyal, J., in *Shambhu Dayal* v. *Smt. Tarawanti and others* (3). I am, therefore, of the considered view that the starting point of limitation under Article 61 of the Schedule to the Limitation Act, 1963, for institution of a suit by the appellant for redemption of the mortgage would start on expiry of the period of 5 years from 20th August, 1953. Therefore, the period of limitation for him to bring the suit would expire on 20th August, 1988. The learned counsel for the respondent cited a number of authorities in opposition to this view. It is, however, not necessary to dilate on them as I find on the perusal of the same that none of them has a bearing on the question before me.

(9) No doubt, the learned trial Court took into consideration what has been stated by the appellant in his written statement; then

(1) A.I.R. 1914 P.C. 36.
(2) A.I.R. 1958 S.C. 770.
(3) A.I.R. 1985 Pb. & Hry. 21.

framed a preliminary issue and ultimately held that the suit did not disclose any cause of action. 'To reject a plaint under Order VII, rule 11, of the Code, the Court right at the initial stage has to go through the contents of the plaint and unaided by any defence taken subsequently by the defendant has to form its view, on the basis of the plaint, whether it discloses a cause of action or not. However, as already mentioned above, the plaint in accordance with the provisions of the Code referred to the mortgage deed dated 20th August, 1953 and was accompanied by a copy of it which had to be perused as a part of the plaint. On consideration of the plaint coupled with the recitals contained in the copy of the mortgage appended with it, it is clear that no cause of action had arisen in favour of the respondent on 25th January, 1985 when he filed the instant suit. Consequently, the plaint was rightly rejected by the learned trial Court.

(10) In view of what has been stated above, I allow this appeal, set aside the judgment dated 3rd December, 1985, and restore the judgment and decree dated 3rd September, 1985 of the learned Sub-Judge, IInd Class, Panipat, rejecting the plaint. There shall be no order as to costs.

H.S.B.

Before : D. S. Tewatia and M. M. Punchhi JJ

COCA-COLA FACTORY WORKERS' UNION (REGD.),—*Appellant.*

Versus

MANAGEMENT OF PUNJAB BEVERAGES PVT. LTD. AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 35 of 1985

May 7, 1986

Industrial Disputes Act (XIV of 1947)—Section 23(c)—Workmen absenting from duty during the currency of an illegal strike—Services of such workmen terminated by way of punishment for participating in the strike—Management neither holding domestic enquiry before passing order of termination nor proving misconduct of workmen before the Industrial Tribunal—Mere participation in an illegal strike—Whether entitles the management to terminate the services of the workmen—Said order—Whether liable to be quashed.

Held, that when it comes to the meting out of punishment to workers participating in an illegal strike as defined in Section 23(c)