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HIGH COURT OF CHHATTISGARH AT BILASPUR

CR No. 215 of 2024

1 - Sunil Kumar Sharma S/o Late Kantichandra Sharma Aged About 57 Years R/o A/22, Vidya Vihar Colony, Nehru Nagar (West), Bhilai, Tehsil And District Durg (Chhattisgarh)

... Applicant

versus

1 - Prakash Kashyap S/o Late H.L. Kashyap Aged About 52 Years R/o B-170, Road No. 8, Smriti Nagar, Bhilai, Police Station Smriti Nagar, Tehsil And District Durg (Chhattisgarh)

2 - State of Chhattisgarh Through Collector, Durg, Tehsil And District Durg (Chhattisgarh)

... Respondents

For Applicant	:	Shri Sandeep Patel, Advocate
For Respondent No.1	:	Shri Harsh Dave, Advocate
For Respondent No.2	:	Shri Anand Gupta, Deputy Government Advocate

Hon'ble Shri Justice Sachin Singh Rajput

Order on Board

15/09/2026

1. Challenge in this revision filed under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC') is to order dated 7.11.2024 passed by 8th Additional District Judge, Durg (CG) in Civil Suit No.CSA/29/2024 by which an application of the applicant/defendant No.1 under Order 7 Rule 11 CPC was

rejected.

2. Learned counsel for the applicant submits that respondent No.1/plaintiff filed a suit for specific performance of a contract in respect of the suit property which is properly described in the plaint *inter alia* pleading that an agreement to sell the suit property was entered into by and between the plaintiff and defendant No.1 on 1.6.2016. He further submits that according to the pleadings made in paragraph 5 of the plaint, the applicant/defendant No.1 on 3.2.2018 sent a notice to the respondent No.1/plaintiff for cancellation of the power of attorney dated 1.6.2016 executed by him in favour of the plaintiff and also *ex parte* cancellation of the agreement. Thus, he submits that when the pleading itself indicates that on 3.2.2018 a notice for cancellation of the agreement to sell was already sent, the cause of action had already arisen and the suit was filed in the year 2024, i.e., after a lapse of 3 years. Thus, *prima face*, according to Article 54 of the Limitation Act, 1963, the suit was barred by limitation. Pleading this, the applicant/defendant No.1 filed an application under Order 7 Rule 11 CPC, which, by the impugned order, was illegally rejected by the learned Trial Court. He further submits that apparently from the pleading of the plaint, the cause of action had already arisen in the year 2018 itself and thus the suit itself was barred by limitation. The learned Trial Court has committed an error in rejecting the application under Order 7 Rule 11 CPC. He submits that admittedly while deciding the application under Order 7 Rule 11 CPC, only the plaint averments are required to be seen

and as such the plaint averments themselves have disclosed arising out of the cause of action in the year 2018 and the suit having been preferred in the year 2024, was hopelessly barred by limitation. The learned Trial Court ought to have decided the application under Order 7 Rule 11 CPC in favour of the applicant/defendant No.1 holding that the suit itself is barred by limitation and the plaint ought to have been rejected. Thus, he submits that the impugned order deserves to be set aside and the plaint of respondent No.1/plaintiff is liable to be rejected.

- 3.** Opposing the above submission, learned counsel appearing for respondent No.1 submits that in order to decide the application under Order 7 Rule 11 CPC only the plaint averments are to be seen and the defence of defendant No.1 is not required to be looked into. He submits that the pleadings made in paragraph 5 of the plaint do not indicate that the applicant/defendant No.1 has refused to execute the sale deed in terms of the agreement to sell. Whereas, he submits that the pleadings made in paragraph 9 of the plaint clearly go to show that on 27.2.2023 a registered notice was sent by respondent No.1/plaintiff for execution of the sale deed, which was replied by the applicant/defendant No.1 on 10.3.2023 indicating that the agreement to sell has been cancelled and he denied for execution of the sale deed. Thus, the cause of action arose in the year 2023 itself and the suit was filed in the year 2024, i.e., within the period of limitation. Even otherwise, he submits that the question of limitation is a mixed question of facts and law and this aspect of the matter can be agitated by the

applicant/defendant No.1 during the proceedings before the learned Trial Court. Thus, he submits that the instant civil revision sans merit and is liable to be dismissed.

4. I have heard learned counsel appearing for the parties and perused the material available with due care.
5. The main crux of arguments of learned counsel for the applicant is that according to the pleadings made in paragraph 5 of the plaint, once the applicant/defendant No.1 in the year 2018 had already cancelled the agreement to sell, the cause of action had arisen and the suit ought to have been filed within a period of 3 years according to Article 54 of the Limitation Act, 1963. Though the pleadings made in paragraph 5 of the plaint indicate that a power of attorney, which was executed by defendant No.1 in favour of the plaintiff dated 1.6.2016, was said to have been cancelled by sending the notice dated 3.2.2018 by defendant No.1 and *ex parte* cancellation of the agreement to sell was also mentioned in the said notice, however, the pleadings made in paragraph 9 of the plaint indicate that on 27.2.2023 a notice was sent by the plaintiff to defendant No.1 for execution of the sale deed, which was replied on 10.3.2023 stating therein about cancellation of the agreement to sell and denial for performance of the agreement to sell by executing the sale deed.
6. It is a settled position of law that in order to decide an application under Order 7 Rule 11 CPC only the plaint averments are to be seen and not the defence of the defendant. Looking to the pleadings made in paragraph 9 of the plaint, the plaintiff has projected a case that the cause of action arose in the year 2023.

Whereas, defendant No.1 took a defence that the cause of action arose in the year 2018. Limitation is a mixed question of facts and law which cannot be adjudicated while deciding an application under Order 7 Rule 11 CPC. Defendant No.1 has all rights to pursue before the learned Trial Court to frame an issue of limitation which could be decided by the learned Trial Court after leading of evidence on that issue.

7. The power under a civil revision is a limited one. The Court cannot act as an Appellate Court to find out correctness of an order. This Court would not set aside an order of the Trial Court in a civil revision jurisdiction until it is passed with material irregularity, perversity or exercising a power not vested with the Trial Court or there is exercise of power with illegality and material irregularity.
8. In the instant case, the learned Trial Court has meticulously assessed the contentions raised by learned counsel for the respective parties and come to a conclusion that limitation is a mixed question of facts and law which cannot be adjudicated while deciding an application under Order 7 Rule 11 CPC. This Court does not find any illegality or material irregularity in passing the impugned order by the learned Trial Court. The civil revision fails and is hereby dismissed.
9. Interim order, if any passed earlier, stands vacated and pending applications, if any, stand disposed of.

Sd/-

(Sachin Singh Rajput)
JUDGE