

HON'BLE SRI JUSTICE R. SUBHASH REDDY

Civil Revision Petition No.808 of 2015

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Order:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed aggrieved by the order dated 16.12.2014 passed in I.A.No.328 of 2014 in O.S.No.41 of 2009, by the XII Additional District Judge, Krishna at Vijayawada.

By the aforesaid order, the I.A., filed by the petitioner-defendant under Order VII Rule 11 CPC to reject the plaint, on the grounds that there is no cause of action to file the suit and the suit of the plaintiff is barred by limitation, is dismissed.

The respondent herein is the plaintiff. He filed the suit for recovery of money basing on promissory note dated 01.04.2003. The petitioner-defendant pleads that no money has been paid to him and the promissory note is fabricated. The suit is filed on 31.12.2008 pleading that there were endorsements dated 01.08.2003 and 01.01.2006 on the promissory note in proof of part payment.

Heard learned counsel for the parties.

It is submitted by the learned counsel for the petitioner that, earlier, notices dated 28.03.2006 and 17.12.2008 were issued to the petitioner, in which there is no reference to endorsements; the endorsements dated 01.08.2003 and 01.01.2006 are also fabricated for the purpose of bringing the claim within the period of limitation. It is further submitted that, in view of the fact that there is no cause of action and the claim is barred by limitation, plaint filed by the respondent-plaintiff ought to have been rejected in exercise of power under Order VII Rule 11 CPC.

Whether the endorsements made on 01.08.2003 and 01.01.2006 are

genuine, or not, is a matter to be decided after trial. It is fairly well settled that the question of limitation is a mixed question of fact and law and in view of the rival claims, it is a matter for evidence, but the same is no ground to reject the plaint on the ground that it is barred by limitation and there is no cause of action. The court below is right in holding that there are no grounds to reject the plaint.

In view of the findings recorded in the impugned order, I see no reason to interfere with the same in this petition under Article 227 of the Constitution of India.

Civil Revision Petition is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the C.R.P., stand closed.

R.SUBHASH REDDY, J

March 6, 2015

MRR