

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

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CIVIL REVISION PETITION No.5857 of 2010

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ORDER:
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This Revision is filed challenging the order dt.12-11-2010 in I.A.No.34 of 2010 in O.S.No.184 of 2009 of the Additional Senior Civil Judge (F.T.C), Nizamabad at Armour dismissing the application for rejection of plaint on the ground that the suit is barred by limitation.

2. The 1st respondent/plaintiff filed a suit for recovery of money against petitioner and other respondents on 17-09-2009 specifically pleading that for some period she was abroad and if that period is excluded, the suit is within limitation.

3. Written statement was filed by petitioner opposing the suit claim and contending that the suit is barred by limitation.

4. The Court below then framed issues including the following issues: (i) "whether the plaintiff can take protection under Section 15(5) of the Limitation Act, 1963?" and (ii) "whether the suit is barred by limitation?"

5. While so, the petitioner/1st defendant filed I.A.No.34

of 2010 under Order VII Rule 11(d) CPC to reject the plaint on the ground that the suit is barred by limitation.

6. The Court below, by impugned order, held that this issue cannot be decided without evidence is led on it and it will be decided after both parties are given opportunity to lead evidence.

7. Challenging the same, this Revision is filed.

8. The learned counsel for petitioner Sri K.Venumadhav contends that the plea of 1st respondent that she was outside the country is not supported by any material and that in the absence of such material, the suit cannot be entertained in view of Section 3 of the Limitation Act, 1963 and therefore, the plaint ought to have been rejected.

9. The learned counsel for 1st respondent Sri Shafath Ahmed Khan, on the other hand, refuted this contention and contended that the issue of limitation having been framed already by the Court below and since it is a matter requiring evidence, it is not proper for the petitioner to insist that the plaint be rejected on the ground that it is barred by limitation, before any evidence is adduced by parties.

10. From the facts narrated above, it is clear that 1st

respondent in the plaint itself had stated that she was outside India for some point of time and that period is to be excluded while computing the period for filing the suit in view of Section 15(3) of the Limitation Act, 1963 and that if such period is excluded, the suit is within limitation. No doubt this allegation is denied by the petitioner in the written statement. Issues have already been framed as set out above as to whether the suit is within time or not. The question whether 1st respondent is in India or outside India for the period mentioned in the plaint or not, is a question of fact. It depends on the evidence to be adduced by both parties. Without such evidence being adduced, it is not possible to decide the said issue. Therefore, the Court below is correct in stating that the said issue will be decided after evidence is adduced.

11. So I do not find any merit in the Revision and it is accordingly dismissed. No costs.

12. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 03-07-2015

Vsv