

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

CIVIL MISCELLANEOUS APPEAL No.457 OF 2015

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JUDGMENT: (Per Justice R. Subhash Reddy)

This Civil Miscellaneous Appeal is filed by the defendants in O.S.No.198 of 2013 aggrieved by the order dated 30.04.2015 passed in I.A.No.330 of 2014 by the III Additional District Judge, Guntur.

The respondent/plaintiff company has filed the aforesaid suit for recovery of money of Rs.1,74,16,766/-. A copy of the plaint filed in the suit is placed on record. It is the case of the respondent/plaintiff that the 1st appellant is the husband of the 2nd appellant.

The 1st appellant, representing the 2nd appellant, who is his wife, has entered into Memorandum of Understanding (MOU) on 25.06.2009, with the respondent/plaintiff, for development of land, belonging to them and their representatives, admeasuring 9200 sq. yards covered by D.No.51/B of Koritepadu village, within the limits of Guntur Municipal Corporation and the 1st appellant received the refundable deposit of Rs.1,30,30,000/-, undertook to receive the amounts at different times and endorsed the same on the reverse of the MOU. It is the allegation of the respondent/plaintiff that the appellants, having received the refundable deposit, played fraud and cheated it. In the

suit, the respondent/plaintiff sought recovery of a sum of Rs.1,74,16,766/- with interest @ 24% p.a., from the date of filing of the suit.

Appellants/defendants filed I.A.No.330 of 2014 under Order VII Rule 11 CPC to reject the plaint, alleging that the suit is barred by law of limitation. In the affidavit filed in support of the I.A., it is stated that the MOU is dated 25.06.2009, the same is not signed by the 2nd appellant and her signature thereon was forged and, further, as the amounts were paid on 29.06.2008 and 04.08.2008, the claim is barred by law of limitation.

In the I.A., respondent/plaintiff filed counter, wherein, while refuting the allegations made by the petitioners in the I.A., inter alia, it is stated that the suit is well within time and as the plea of limitation is mixed question of fact and law, it is to be decided after full-fledged trial. It is further stated therein that the amount paid to the appellants herein under MOU was only a refundable deposit and not a debt and the allegation of the 2nd appellant that her signature is forged is not correct. It is further stated in the counter that the appellants have cheated the respondent/plaintiff by violating the terms of the MOU, as such, the I.A., may be dismissed.

In the I.A., no evidence was adduced. The civil court, having considered the various contentions on behalf of the parties, dismissed the I.A., by the impugned order, mainly by recording a finding that the contentions

raised by the appellants are questions of fact which need to be dealt with only after full-dressed trial in the suit and not in proceedings of this nature with reference to the terms and conditions said to have been agreed by the parties under the MOU.

It is submitted by Sri J.V. Prasad, learned counsel for the appellants that, inasmuch as the 2nd appellant has not signed the MOU dated 25.06.2009, limitation is to be reckoned from the date of such MOU dated 25.06.2009 and as the suit is filed in the year 2013, the same is barred by time. It is further submitted that in view of the provision under Order VII Rule 11 (d) CPC, plaint filed by the respondent/plaintiff is to be rejected as barred by law of limitation.

Having heard the learned counsel for the appellants, we have perused the material on record.

In the instant case, appellants/defendants are claiming rejection of plaint, on the ground that, as the suit is barred by limitation, it deserves rejection under Order VII Rule 11 (d) CPC. As per Order VII Rule 11 (d) CPC, it is clear that plaint is to be rejected where suit appears from the statement in the plaint to be barred by any law. It is the case of the appellants that, inasmuch as the 2nd appellant has not signed the MOU, limitation starts from the date of MOU, which is denied by the respondent/plaintiff in the counter. In the plaint, in clear terms, it is pleaded by the respondent/plaintiff that there is

no relationship of creditor and debtors between the respondent/plaintiff and the appellants/defendants and appellants/defendants are the trustees of the amounts paid by him. It is further pleaded by the respondent/plaintiff that right to sue arose in the year 2011 when the 1st appellant sold the property covered by the MOU to third parties. Having regard to the contentious issues in the matter, we are in agreement with the view taken by the civil court that such issues are to be resolved only after full-dressed trial, but the same cannot be a ground to reject the plaint under Order VII Rule 11 (d) CPC.

For the aforesaid reasons, we find no merit in this appeal and the same is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

July 9, 2015

MRR