*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

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+ CIVIL REVISION PETITION NO.1874 OF 2015

% Dated 07.10.2015

Nalla Raji Reddy …… Petitioner

Vs.

$ Venkatanantha Chary …. Respondent

! Counsel for the petitioner : Sri Mohd. Adnan

^ Counsel for the respondents :

<GIST:

> HEAD NOTE:

? Cases referred

1. (1997) 10 SCC 192

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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CIVIL REVISION PETITION No.1874 of 2015

ORDER:

This revision is preferred by the plaintiff, whose plaint bearing O.S.S.R No.639 of 2009 has been rejected by the Court of the Senior Civil Judge, Vikarabad, Ranga Reddy District, under Order VII Rule 11(d) of C.P.C.

O.S.S.R No.639 of 2009 has been preferred for directing the sole defendant to execute sale deed and to register the same in favour of the plaintiff or his nominees in respect of the land comprising of Ac.33-41 cts situate in various survey numbers of Aloor Village, Chevella Mandal, Ranga Reddy district. The plaintiff also sought for a perpetual injunction for restraining the defendants and his men from causing interference with the peaceful possession and enjoyment over the suit schedule land. It appears, the suit was presented on or around 12.03.2009 and it was rejected by a detailed order passed on 18.02.2015.

It is the case of the plaintiff/petitioner that he entered into an agreement of sale with the defendant on 25.01.1992 for purchasing the suit schedule property and it is his case that in compliance with the terms, he paid the balance sale consideration amount of Rs.1,80,000/- on 22.03.1992, within the stipulated period of time and that the defendant has executed a receipt in respect thereof. It is also the case of the plaintiff that the defendant earlier instituted O.S.No.77 of 2006 on the file of the Court of the Junior Civil Judge, Chevella seeking perpetual injunction against the plaintiff/petitioner herein. On 16.03.2006, in I.A.No.226 of 2006 moved therein, a temporary injunction was granted restraining the present plaintiff/petitioner from interfering with the possession of the suit schedule property and against the said order, the present plaintiff/petitioner carried the matter in CMA No.22 of 2006 before the Sub-Court, Vikarabad, which court allowed CMA No.22 of 2006 and dissolved the interim injunction granted in I.A.No.226 of 2006 by the Trial Court. Then, the respondent/defendant carried the matter by way of revision in C.R.P.No.1705 of 2007 to this Court and that civil revision petition was dismissed on 08.08.2007 confirming the order passed by the Sub-Court, Vikarabad. Thereafter, the present plaintiff filed civil suit bearing O.S.S.R.No.1156 of 2007 on 21.12.2006 seeking specific performance of agreement of sale dated 25.01.1992. The Court of the Senior Civil Judge, Vikarabad, by its order dated 03.04.2007 rejected the plaint under Order VII Rule 11 C.P.C holding that it is barred by limitation. Against that order of rejection of the plaint dated 03.04.2007, the present plaintiff/petitioner carried the matter by way of revision in C.R.P.No.4249 of 2007 to this Court. This

Court allowed the revision and thereupon the Sub-Court numbered the plaint as O.S.No.7 of 2008. However, the respondent herein, who is the defendant in that case carried the matter by way of Civil Appeal No.1322 of 2009 to the Supreme Court of India. The Supreme Court by its order dated 27.02.2009 allowed the civil appeal on the ground that a perusal of the plaint makes it clear that the cause of action for filing the suit for specific performance accrued to the plaintiff on 31.03.1992 and the period of limitation prescribed for filing such suit is three years and hence, the suit instituted 11 years thereafter in the year 2006 is clearly barred by limitation and hence, the Trial Court was justified in rejecting the plaint on the ground of limitation and the High Court committed an error in reversing the said order of the Trial Court. By virtue of the order of the Supreme Court dated 27.02.2009, the said civil suit O.S.S.R.No.1156 of 2007, since numbered as O.S.No.7 of 2008 stood rejected. It would also be appropriate to notice that the petitioner/plaintiff herein has filed Review Petition (C) No.1079 of 2013 in Civil Appeal No.1322 of 2009. That review petition was considered by the Supreme Court on 16.07.2013 and dismissed the same as the earlier order passed in Civil Appeal No.1322 of 2009 does not suffer from any error apparent warranting its reconsideration and also for the reason that the review petition is barred by time also. Notwithstanding the same, once again the present suit O.S.S.R.No.639 of 2009 was presented on 12.03.2009.

Now, once again, this plaint is rejected under Clause (d) of Rule 11 of Order VII C.P.C, as it is barred by limitation. It is this order which is sought to be revised in this revision.

Learned counsel for the petitioner would contend that Rule 13 of Order VII C.P.C made it very clear that the rejection of the plaint on any of the grounds therein mentioned shall not of its own force preclude the plaintiff from presentation of a fresh plaint in respect of the same cause of action and hence, the rejection of the present plaint based upon the order of earlier rejection of the plaint in O.S.No.7 of 2008 is erroneous. The learned counsel for the petitioner would also place reliance upon the order passed by the Supreme Court in ***Delhi Wakf Board vs. Jagadish Kumar Narang*** and would submit that in view of the clear legal position contained in Rule 13 of Order VII, the rejection of the present plaint is totally illegal, unjust and unsustainable.

Order VII Rule 11 C.P.C has dealt with various aspects relating to rejection of plaint and hence, it has spelt out the types of cases in which the plaint shall be rejected. Clause (a) thereof sets out that a plaint is liable to be rejected where it does not disclose any cause of action, inasmuch as, upon a careful and meaningful reading of the plaint as a whole in a non-formal manner and if the same is found to be manifestly vexatious and meritless, in the sense that it failed to disclose a clear right to sue such a plaint is liable to be rejected under Clause (a) of Rule 11 Order VII C.P.C. The rejection in such cases is for want of the necessary cause of action accruing the right to sue or it could be for the reason that it was not disclosed clearly in the plaint. Therefore, if a plaint is rejected once before for want of non-disclosure or for not accruing of cause of action, the provision contained in Rule 13 of Order VII will certainly come to the rescue of such a plaintiff to present a fresh plaint clearly disclosing the cause of action and the right to sue, which may have either occurred prior to the filing of the earlier suit or even thereafter. Therefore, cases where a plaint is rejected in view of Clause (a) of Rule 11 Order VII C.P.C does not present any serious difficulty, for purposes of applicability of Rule 13 of the said order.

Same is the case with Clauses (b), of Rule 11 which deal with cases where the relief claimed is undervalued and inspite of being required by the Court to correct the valuation, within a time fixed by the Court, the plaintiff fails to do so and in such cases, the plaint itself is liable to be rejected. In such cases, upon proper valuation of the relief claimed, perhaps, the issue relating to the pecuniary jurisdiction of the Court will get settled and hence, even in cases of rejection of plaint under Clause (b) of Rule 11 would not come in the way for presentation of a fresh plaint in respect of the same cause of action in terms of Rule 13 of the same order.

Clause (c) of Rule 11 deals with cases where the relief claimed is properly valued by the plaintiff but however, the plaintiff inspite of being required by the Court to sufficiently stamp it within the time prescribed, fails to do so, then the plaint is liable to be rejected. In such cases, there would be no difficulty whatsoever for presentation of a fresh plaint properly valuing the relief claimed therein and also properly stamping it. Therefore, the principle contained in Rule 13 of Order VII would present no difficulty whatsoever.

But, however, when it comes to the rejection of a plaint where it appears to have been barred by any law, can such a plaint be liable to be presented once again, is

the question that is required to be addressed. It will be important to notice the fact that Section 3 of the Limitation Act, 1963, has clearly spelt out that every suit instituted after the prescribed period shall be dismissed although limitation has not been set-up as a defence. Thus, the language employed in Section 3 of the Limitation Act, 1963, is in mandatory terms. When once, the prescribed time for institution of a suit for a particular relief sought for therein has expired, such a suit shall be dismissed irrespective of the fact whether limitation has been set-up as a defence or not. In the instant case, the petitioner earlier instituted a suit seeking an identical relief, i.e. O.S.S.R.No.1156 of 2007 (later on numbered as O.S.No.7 of 2008) and that was found to have been barred by the Supreme Court by its judgment on 27.02.2009 in Civil Appeal No.1322 of 2009. A Review Petition (C) No.1079 of 2013 moved therein was also dismissed by the Supreme Court on 16.07.2013. Therefore, the suit for specific performance of the agreement of sale dated 25.01.1992 by the plaintiff herein, if it is barred in the year 2006 itself, the question of the same plaintiff presenting another civil suit for an identical relief on 12.03.2009 would not simply arise. Once, the period of limitation commences, it does not stop, unless, by a statutory provision it has been done so. In cases where a plaint is rejected once before on the ground that the relief claimed therein is barred by limitation, the provision contained under Rule 13 of Order VII C.P.C would not come to the rescue of such a plaintiff for presentation of a fresh plaint for the reason that the period of limitation which has expired earlier remains to be the same even on the subsequent occasion and consequently, the subsequent plaint is also bound to be rejected. A time barred relief cannot be got enforced through the process of the Court.

The order of the Supreme Court in Delhi Wakf Board's case, referred to supra, has been rendered in a different context. That is a case where the fresh plaint presented on the second occasion was rejected by the Trial Court on the ground that a similar plaint was rejected earlier. In that context, the Supreme Court clarified that rejection of a plaint earlier once before does not prevent the plaintiff to present a suit afresh, as per the provision contained under Rule 13 of Order VII C.P.C. But, in the instant case, the earlier plaint in O.S.S.R.No.1156 of 2007, (numbered as O.S.No.7 of 2008) has been rejected on the ground that it was already barred by time. But, such a bar would work in perpetuity against the present plaintiff/petitioner. Therefore, the ratio in

Delhi Wakf Board's case would not get attracted to the cases of rejection of plaint under Clause (d) of Rule 11 of Order VII C.P.C,

Therefore, I do not see any merit in this revision and it is accordingly dismissed, but however without costs.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

07.10.2015
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