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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO. 127 OF 2016
IN
SPECIAL CIVIL SUIT NO. 80 OF 2013**

M/s Dev Enterprises	...Applicant.
vs	
Mukesh J. Gupta & Ors.	...Respondents

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Mr Miheer Jayakar a/w Sunil Jayakar & Ms Gunjan Jayakar for the
Applicant.
Mr S.R.Ganbavale a/w J.P.Mishra and Suresh Upadhyay for
Respondent No.1.
.....

**CORAM : N.M.JAMDAR, J.
21 SEPTEMBER, 2016**

P.C. :

By this application the Applicant challenges the order passed by the learned Civil Judge, Senior Division, Panvel rejecting the application filed by the Applicant under Order VII Rule 11 of the Code of Civil Procedure, 1908. Heard learned counsel for the parties.

2 The suit has been filed by the Respondent/ Plaintiff in the court of Civil Judge, Senior Division, Panvel seeking a relief that Defendant Nos.7 to 17 be directed to make the Respondent / Plaintiff as a partner in the partnership firm and

also to cancel tripartite agreement dated 29 July 2008. The application under Order VII Rule 11 of CPC was disposed of by the learned Civil Judge, Sr. Dn., Panvel, thereafter Civil Revision Application No.708 of 2014 was filed, which was disposed of by this Court on 28 July 2015 directing the learned Civil Judge, Sr. Dn. to reconsider the application. Learned counsel for the Applicant advanced three proposals as regards invoking Order VII Rule 11 of CPC. The first ground is that there is no cause of action made out in the suit, secondly that the suit is barred under the provisions of Section 31 of the Indian Partnership Act and thirdly that the suit is barred by limitation.

3 It is settled that while considering such application, the pleadings in the plaint will have to be seen. The inquiry to ascertain whether the cause of action is made out is not the same as to whether the Plaintiff is entitled to succeed in the suit on the basis of such averments. As far as the contention that no cause of action is made out, perusal of the plaint shows that the grievance of the Respondent / Plaintiff is, in spite of paying substantial amount, to be inducted as a partner in the firm, Defendant Nos.7 to 17 only gave verbal assurances and did not do so and continued with the partnership. This cannot be said to be lack of any cause of action. Whether the Petitioner will succeed in the suit claim is the different matter altogether.

4 As far as bar of Section 31 of the Partnership Act is concerned, Section 31 reads as under:

“31. Introduction of a partner.— (1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

(2) Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

This section states that no person shall be introduced as a partner without the consent of all the existing partners, subject to the contract between the partners. Therefore, if a party is successful in showing there exist a contract between the partners, then there is no such absolute bar for even an institution of the suit. If the averments in the plaint are considered, it is the case of the Respondent / Plaintiff that there was an oral contract pursuant to which the amount was given, and therefore, it cannot be said that such a suit which alleges an existence of a contract, is barred under Section 31 of the Act. Again whether there exist any contract, is the subject matter of merits of the suit which the Petitioner can always argue at the time of hearing of the suit.

5 As far as the aspect of limitation is concerned, in the application taken out under Order VII Rule 11 of CPC, all that

the Petitioner has stated that the so-called right of the Plaintiff to recover the loan money has come to an end in the year 2007 and consequently the prayer to that effect will be barred by the Law of Limitation. The Respondent / Plaintiff has sought for a prayer that he should be made a partner for cancellation of tripartite agreement and for order of injunction, as not to deal with the property. It is not understood as to what is recovery of loan money. As far as the cause of action for present suit is concerned, in the plaint it is stated that it arise when the Petitioner came to know through the letter received under Right to Information Act and the cause of action continued day to day. Therefore, going by the pleadings in the plaint it cannot be said that ex facie the suit is barred by the Law of Limitation. Therefore, it is not the case to conclude at this stage under Order VII Rule 11 of CPC that the suit is barred by the Law of Limitation. This finding on limitation, in the facts of this case, therefore, would be mixed question of facts and the Petitioner can always urge the same at the time of hearing of the suit. In the circumstances, no case is made out for interference with the impugned order. With the clarification which are given above, the Revision Application is disposed of. It is open to the parties to make an application for early disposal of the suit.

(N.M.JAMDAR J.)