IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

Reserved on : 15.12.2016

Delivered on : 21.12.2016

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

C.S.No.684 of 2013
and
A.No.6422 of 2014

P.Cholaraja,
S/o.late Periyasamy Nadar,
Properietor
P.J.Industries,
102, Red Hills Road,
Villivakkam,
Chennai 600 049. ... Plaintiff

-Vs-

P.V.Kannan,
S/o.P.V.Thambi,
No.27/1 Vaigai Street,
Rajaji Nagar,
Villivakkam,
Chennai 600 049.
... Defendant

Civil Suit praying that this Hon'ble Court be pleased to pass a Judgment and decree, directing the Defendant to pay a sum of Rs.28,64,100/- together with interest at 12% from the date of plaint till the date of realization in full and to pay the cost of the suit.

A.No.6422 of 2014

P.V.Kannan,
S/o.P.V.Thambi,
No.27/1 Vaigai Street,
Rajaji Nagar,
Villivakkam,
Chennai 600 049. ...Applicant/Defendant

-vs-

P.Cholaraja,
S/o.late periyasamy nadar,
Properietor
P.J.Industries,
102, Red Hills Road,
Villivakkam,
Chennai 600 049.
..Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to reject the plaint in the above C.S.No.684 of 2013.

This Suit along with this application coming on this day before this court for hearing the court made the following order:

This application has been filed under Order VII Rule 11 of Civil Procedure Code read with Order XIV Rule 8 of O.S. Rules to reject the plaint.

2. The brief averments of the petition is as follows :

The petitioner and respondent/plaintiff started P.J. Industries in the year 1993. The petitioner invested his drilling machine and tools towards his contribution for the said firm. Because of petitioner's experience, the industry has got the tender for rolling shutters from I.C.F., Perambur. The respondent/plaintiff opened the bank account as a proprietor of P.J. Industries and he has also registered the proprietorship in his name. From the year 1993 to 2004, the respondent used to give payment for all the suppliers, salary for the petitioner and the wages of other workers only by way of cheque. As many of the suppliers did not have bank account, they used to demand payment by way of cash. Similarly, some of the suppliers also demanded cash payment to avoid sales tax. To meet out the request of the above persons, the petitioner used to pay the cash and get the materials supplied to the company. Only under these circumstances, the petitioner used to obtain cheques from the respondent and pay the suppliers and workers. The above demand were duly acknowledged and accounted by the respondent's auditor. The income tax returns has also been filed based on it. When the matter stood thus, in order to discard the petitioner from the company, the respondent has come up with a story of fraud and misappropriation. In this regard, a false case has also been registered against the petitioner and two others in January, 2005. However, the same complaint was closed as 'mistake of fact'. The protest petition filed by the respondent was also dismissed. However, the respondent manoeuvred to get the matter investigated by the CBCID and CBCID, in turn filed final report against the petitioner. With the influence of the police, the respondent attempted to threaten the petitioner. As all the attempts have filed, he has filed the present suit for recovery of money on the alleged fraud committed by the petitioner in the year 2004. According to the petitioner, the plaint itself has to be struck of as it has been filed beyond time and barred by limitation. Hence prayed to reject the plaint.

3. Brief averments of the counter filed by the respondent :

It is the contention of the respondent/plaintiff that the petitioner was only an employee to manage the business. He reposed faith on the petitioner and appointed him as a manager to look after the business. As the respondent was looking after other business and litigations relating to other business, he could not concentrate the P.J. Industries. He used to give blank cheque signed by him for easy running of the business. However, the petitioner and his friends Shankarraj and Narayanraj misappropriated the cheques. The respondent came to know about the misuse of the cheques only in the year 2004. It was his first knowledge of the probable fraud committed against him. Immediately, he gave a complaint and the police registered a case in Crime No.67 of 2005 under sections 381, 409, 418, 420, 424 read with section 120(B) of Indian Penal Code. However, the above case was referred as 'mistake of fact'. Then he filed a protest petition. Thereafter, on the basis of his representation, the CBCID has enquired the matter and completed investigation and filed final report on 04.02.2009 against the petitioner and others. Only at this stage, the respondent has come to the knowledge of the fraud committed by the petitioner. Therefore, he has filed the present suit within three years from the date of filing of the final report. Hence, prayed for dismissal of the application.

4. It is the contention of the learned counsel for the petitioner that the alleged misappropriation was discovered by the petitioner in the year 2004 itself. In this regard, police complaint has also been filed in the year 2004, wherein, the respondent has given specific instances of alleged misappropriation by the petitioner as well as the so called friends. When the respondent having come to the knowledge of the alleged misappropriation in the year 2004, this suit filed in the year 2011 is barred by limitation. Section 17 of the Limitation Act will apply to the present facts of the case. Merely because further investigation is conducted by the CBCID, petitioner and others were charge sheeted for the alleged offences, same will not give rise to limitation. In fact, the plaint pleading itself clearly prove that the respondent knew about the alleged misappropriation in the year 2004. Having slept over from 2004 till 20011, now the respondent cannot take a plea that fraud has come to his knowledge only after the final report filed by the CBCID. Therefore, the plaint pleadings itself clearly indicate that the suit is barred by limitation. In support of his contentions, he relied upon the judgment of this Court reported in **2013 (4) CTC 175.** Hence prayed for rejection of the plaint.

5. Whereas, it is the contention of the learned counsel for the respondent/plaintiff, in the year 2004,

he has not come to know the misappropriation in its entirety and it is only in the form suspicion. Only after investigation by CBCID in the year 2009, the fraudulent act of the petitioner/defendant was discovered. Therefore, the limitation starts to run from the date when the final report was filed in the year 2009. Section 17 of the Limitation Act provides limitation for three years from the date when the fraud was discovered. Admittedly, in this case, the entire fraud was discovered only in the year 2009. In the year 2004, it is only a suspicion level. Therefore, it cannot be said that the respondent/plaintiff had the knowledge about the fraud and misappropriation and submitted that the judgment relied upon by the petitioner is not applicable to the facts of this case. Hence prayed for dismissal of this petition.

6. In the light of the above submissions, now the point for consideration is

Whether the suit itself is barred by Limitation and the plaint has to be rejected at thresh hold.

7. The suit has been filed for recovery of a sum of Rs.28,64,100/- with interest at the rate of 12% per annum from the date of plaint. The above amount is said to be the amount allegedly misappropriated by the petitioner by misusing the blank cheques signed by the respondent/plaintiff herein. It is well settled law that the plaint can be rejected on the ground of limitation

when the suit appears from the statement of the plaint to be barred by any law. The entire averments of the plaint in its entirety must be taken into consideration to find out whether the suit is barred by limitation.

8. In the above background, when the suit averments are read, it is pleaded by the respondent/plaintiff that the petitioner/defendant was his employee and he was managing his business. All the transactions of his business was carried away through banks and the petitioner/defendant used to get the signature of the respondent/plaintiff in blank cheques for the purpose of business transactions. However, in December 2004, the petitioner/defendant has stolen five cheques signed by the respondent/defendant and misused the same and withdrawn the sum and misappropriated the same. When confronted by the plaintiff, the defendant stopped attending the factory. Therefore, the account of the industry was verified and it came to light that a huge amount of Rs.40,45,420/- was misappropriated by the defendant/petitioner and his friends. It is the specific case of the plaintiff that the defendant has misappropriated a sum of Rs.28,64,100/- in the year 2004 itself. It is further pleaded that having come to know about such misappropriation, he gave a complaint to the Central Crime Branch. As a result, the police registered a case in Crime No.67 of 2005 for various penal sections and filed a report on 20.12.2005 and referred the case as

'mistake of facts'. Though, it is averred by the plaintiff that subsequently, the CBCID has enquired the matter and filed a final report against the accused on 04.02.2009 and this suit filed on 03.01.2011 is filed within time of limitation, the avements of the pleadings made in para 4 of the plaint clearly prove the fact that in the year 2004 itself, the respondent/plaintiff has verified the accounts and has a knowledge about misappropriation of a sum of Rs.28,64,100/-. Only after verifying such alleged misappropriation in the year 2004 itself, he has lodged a police complaint. This fact has been clearly fortified by his typed set filed by the respondent/plaintiff. In the typed set, a copy of the complaint given in the year 2004 is attached. The same clearly show that the specific instances of the alleged misappropriation by the petitioner and his friends, were known to the respondent/plaintiff and he has also given a complaint to the police to the effect that the petitioner and his friends fraudulently conspired together and cheated the respondent/plaintiff and committed fraud. These facts clearly show that in the year 2004 itself, the respondent/plaintiff has the knowledge of the alleged misappropriation, and fraud said to have been committed by the defendant. The plaint pleadings clearly proves the knowledge of the respondent/plaintiff of the alleged fraud and misappropriation.

9. In this regard it is useful to refer Section 17 of the Limitation Act and the same reads as follows :

17. Effect of fraud or mistake

(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act-

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him; the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

PROVIDED that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which-

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgement-debtor has, by fraud or force, prevented the execution of a decree or order with the period of limitation, the court may, on the application of the judgement-creditor made after the expiry of the said period extend the period for execution of the decree or order:

PROVIDED that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

10. A reading of the above section makes it clear that the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it. The above section makes it clear that once the plaintiff has knowledge of the alleged fraud or misappropriation, limitation starts for filing suit. Such suit should have been filed within a period of three years. The plaint pleadings clearly show that he has not filed the suit immediately. The plaint pleadings clearly indicate that the plaintiff has mentioned a definite sum allegedly misappropriated by the petitioner after verification of his accounts. The plaintiff has knowledge about these facts in the year 2004 itself.

Whereas, the suit has been filed only in the year 2011 beyond the period of limitation as stated under section 17 of the Limitation Act. Therefore, the contention of the learned counsel for the respondent that in the year 2004, fraud has not been completely discovered and it was only in the suspicion level cannot be countenanced. The pleading of the plaint clearly indicate that only after verifying the accounts, the plaintiff has arrived at a specific sum i.e., Rs.28,64,100/- as alleged misappropriated amount. Therefore, it cannot be said that at the relevant period, it was only in suspicion level. Further investigation of the CBCID and filing of the charge sheet in the year 2009 implicating the accused for various offences cannot be considered as discovery of the misappropriation or fraud for the first time.

11. Admittedly, the entire police investigation started based on the first information lodged by the plaintiff. The information is a not cryptic one. The information given to the police was with regard to the cognizable offence. Only on the basis of the above information, the police investigated the offence and filed final report. At the time of information to the police, the plaintiff was very well aware of the alleged misappropriation and he has also stated definite amount as alleged misappropriation amount. The conduct of the plaintiff keeping silent till filing of the final report in the year 2009 and filing of the suit in the year 2011

clearly amounts to laches on his part.

12. In the Judgment reported in **Hardesh Ores Pvt. Ltd. and another Vs. Hede and Company (2007(5) MLJ 187),** Honourable Apex Court has held as follows :

> "I. "The provision in Order 7 Rule 11 C.P.C. for rejecting the plaint if it appeared to be barred by any law would include the law of limitation."
>
> II. "It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from a reading of the plaint itself as a whole. For the said purpose the averments made in the plaint in their entirety must be held to be correct."

13. Similarly in **M.Banupriya Vs. M.Lakshmi and others reported in 2013(4) CTC 175** this Court has held as follows :

> "Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11(d) - Limitation Act 1963 (36 of 1963), Section 17, Article 59 - Rejection of Plaint, barred by law - Whether includes law of limitation? - Barred by Limitation? - Effect of Fraud or Mistake -

Held, it has been clearly stated in the plaint that she came to know that 2nd Defendant viz., brother of plaintiff has been acting prejudicial to her interest on 2000 - Moreover, even from cause title of plaint, it is very clear that Plaintiff, 1st & 2nd Defendant are residing under same roof - even as early as in 2000 - whether plea of limitation is mixed question of law or fact depends upon averments made in Plaint - But when it is apparently clear from averments in Plaint that Suit is filed beyond Hardesh Ores Pvt Limited and another Vs. Hede & Company, 2007 (5) MLJ 187 (SC) followed - Wordings 'any law' envisaged in Order 7., Rule (11)(d) includes Law of Limitation also - In present case, Suit has been filed after 11 years from date on which she got knowledge - If Instrument is challenged on grounds of fraud, then Section 17 of Limitation Act would apply, in such situation Suit has to be filed within 3 years from date of knowledge of sale - Therefore, present Suit is hopelessly barred by limitation - Suit is liable to be rejected."

14. In Narne Ramamurthy V Ravula Somasundaram and

others (2005) 6 SCC 614 (supra), the Hon'ble Apex Court has heldb) In Narne Ramamurthy V Ravula Somasundaram and others (2005) 6 SCC 614 (supra), the Hon'ble Apex Court has held that when limitation is the pure question of law and from the pleadings itself it becomes apparent that the suit is barred by limitation, then it is the duty of the court to decide limitation at the outset even in the absence of a plea.

15. Similarly, in **Ranganathan Vs. Narayanan** reported in **2015 (3) CTC 1**, it has been held as follows :

"Limitation Ac5 1963 (36 of 1963), Section 14 : Exclusion of period spent before Criminal Court – Whether period spent before Criminal Court can be excluded, while computing period of limitation – Plaintiff filed Suit for Damages against Defendant for injuries caused by him in year 1997 – Criminal proceedings initiated against Defendant attained finality in year 2003 – Plaintiff filed Suit in year 2004 – Contention of plaintiff that period spent in Criminal proceedings should be excluded for computation of limitation – In cases, where plaintiff has been prosecuting with due diligence in another Civil proceedings, in Court of first instance or Appeal or

Revision, then period so spent in said proceedings can be excluded - Criminal case cannot be equated to Civil proceedings for purpose of Section 14.”

16. From the above judgments, it is very clear that when it is apparent from the averments made in the plaint that the suit is filed beyond the period of limitation, the same is liable to be rejected. The wordings 'any law' envisaged in Order 7 Rule 11(d) includes law of limitation also. The averments of the plaint in this case makes it clear that the respondent/plaintiff had knowledge of the alleged misappropriation by the petitioner/defendant in the December 2004 itself. But the suit has been filed only on 3.1.2011 which is beyond the period of three years. Therefore, this Court is of the view that the suit is liable to be rejected on the ground of limitation and the point is answered accordingly.

17. In the result, the petition is allowed and the suit is rejected.

Sd/ N.S.K.J

21.12.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/22.03.2017 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.