

\$~3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CM(M) 118/2015 & C.M. No.2474/2015

SYNERGY STEELS LIMITED

..... Petitioner

Through Mr.Ravi Gupta, Sr. Advocate with
Mr.D.K.Kaushik and Mr. Desh Raj,
Advocates.

versus

LAKRA OIL TRADING COMPANY

..... Respondent

Through Ms.Saahila Lamba, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

%

17.02.2016

Impugned order dated 05.8.2014 is set aside. This order was passed on the application filed by the defendant XIV Rule 5 CPC seeking an issue of limitation to be framed.

Learned counsel for the petitioner has drawn attention of this Court to an earlier order passed by the Trial Court dated 05.02.2013 wherein the issue of limitation was considered and disposed of. This Court notes that on 05.02.2013 the defendant was not represented. Summons of the suit were in fact issued on that date. The defendant was never heard and the question of limitation was decided in the absence of the defendant.

The issues were framed on 17.10.2013. Present application under Order XIV Rule 5 CPC came to be filed in the month of August, 2014

wherein the question of limitation had been prayed for.

Submission of the learned senior counsel for the petitioner is that specific defence in the written statement qua the issue of limitation had been taken but the Trial Court had not framed any issue on the limitation. This Application was not considered by the Trial Court in the correct perspective.

This submission of the learned senior counsel for the petitioner has force. When there was a specific defense of limitation raised by the defendant in his written statement it was incumbent upon the Trial Court to have framed an issue on limitation. The earlier order dated 05.02.2013 was passed prior to the filing of the written statement by the defendant and as such it has not dealt with the arguments of the defendant which had qua this issue and to be decided in view of the specific defence taken by the defendant.

The matter is at the stage of evidence of the plaintiff. The Trial Court shall re-cast the issues and frame an additional issue which reads as under:

“Whether the suit of the plaintiff is not within the period of Limitation? OPD”

With these directions petition disposed of.

INDERMEET KAUR, J

FEBRUARY 17, 2016

ndn