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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Date of Decision: 20.07.2016*

+ CM(M) 683/2016

RAVI SAHNI

..... Petitioner

Through Mr. K.N. Popli, Advocate.

versus

POMESH SAHNI

..... Respondent

Through None.

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J. (Oral)**

**CM No. 25470-71/2016 (exemption)**

Exemption is allowed subject to all just exceptions.

**CM(M) 683/2016 and CM No .25469/2016 (stay)**

1. By the present petition, the petitioner seeks to impugn the order dated 06.02.2016 and 09.05.2016 passed by the trial court. By the order dated 06.02.2016, the trial dismissed the application of the petitioner/defendant under Order VII Rule 11 CPC for rejection of the plaint.
2. The plaintiff/respondent has filed a suit for recover of Rs. 8,22,500/-. The payment was said to be a friendly loan. There is further an averment made by the plaintiff/respondent that at the time of grant of the loan it was agreed that the same would be returned as and when demanded by the respondent and therefore, no period for refund of the loan was fixed between the parties. In the application filed by the petitioner under Order VII Rule 11 CPC, it was urged that the suit is covered under Article 19 of the Limitation Act as the loan had been given on 01.02.2011, the period of limitation had

expired inasmuch as the suit for recovery was filed on 24<sup>th</sup> September 2014.

3. The trial court by its order dated 06.02.2016 noted the averments made by the respondent in the plaint whereby it was categorically stated that there was an agreement between the respondent and the petitioner to the effect that the loan shall be returned by the petitioner as and when demanded by the respondent. Based on this averment in the plaint, it was held by the trial court that Article 19 of the Limitation Act would not apply and Article 22 of the Limitation Act would be attracted, meaning thereby the limitation period of three years would commence only when the respondent makes a demand.

4. Thereafter, the petitioner moved a review petition in which again it was strenuously contended that the transaction is a loan and not a deposit and hence, the appropriate provision would be Article 19 of the Limitation Act. That review petition was also dismissed on 09.05.2016.

5. Order VII Rule 11 CPC reads as follows:-

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

6. The settled legal position is that under Order VII Rule 11 CPC, the Court has jurisdiction to reject the plaint where it does not disclose any cause of action, where the relief claimed is under-valued and the valuation is not corrected within a time fixed by the Court and that the suit appears from the statement in the plaint to be barred by any law. For the purpose of rejection of the plaint, the Court has to read the entire plaint as a whole to find out whether it discloses a cause of action. So long as the plaint discloses some cause of action, which requires determination, the mere fact that the plaintiff has a weak case and may not succeed would not be a ground for rejection of the plaint. In the above context, reference may be had to the judgment of the Supreme Court in the case of *Mayar (H.K.) Ltd & Ors v. Owners & Parties, Vessel M.V. Fortune Express & Ors*, AIR 2006

*SC 1828*. In para 11 the Hon’ble Supreme Court held as follows:

“It is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII, Rule 11 of the Code. Essentially, whether the plaint discloses a

cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.”

Similar are the observations of the Hon’ble Supreme Court in the case of *Vigneswara Coop. Housing Society Ltd. V. K. Balachandramouli & Ors*, (2005) 13 SCC 506.

7. Reference may be had to the relevant paras of the plaint which read as follows:-

“4. That the defendant had further agreed at the time of grant of loan that the same would be returned as and when demanded by the plaintiff and, therefore, no period for refund of the loan was fixed between that parties.

xxx

7. That the plaintiff feeling dissatisfied with the lame excuses of the defendant thereafter was compelled to issue a legal demand notice dated 26.08.2014 which was sent by the plaintiff through registered post as well as through courier and which notice was duly served upon him....”

9. That the cause of action for filing the present suit initially accrued on 1<sup>st</sup> February 2011 when the plaintiff had advance the sum of Rs. 5,00,000/- (Rupees five lacs only) as loan to the defendant. The cause of action subsequently arose on each and every demand for repayment of the loan amount. It finally arose

when a legal demand notice dated 26.08.2014 was sent by the plaintiff through his advocate and when the defendant failed to comply with the same. Thus the cause of action is continuous and the suit as such is within time.”

Hence, assuming these averments are correct, it cannot be said that the case of the respondent is barred by limitation.

8. Learned counsel for the petitioner has relied upon the judgment of the Punjab and Haryana High Court in the case of *Ujjagar Singh vs. The Committee of the Management of the Gurudwara Shahidan Ladewal, Mahalpur, (1976) 78 PLR 789*. Relevant portion of the judgment reads as follows:-

“2. .... It is well settled that where a question arises as to whether a transaction is a deposit or a loan, there is no presumption in law that it is a deposit except in regard to the monies of a customer in the hands of a banker. If a person hands over money to another who is not a banker on the understanding that it is not a gift, it would be regarded in law as a loan and if the former wants to make out that it is a deposit, the onus is on him to show that the parties intended to treat it as such, i.e. that their intention was that the person to whom the money was handed over should keep the money till it is asked for by the other party to the transaction. ..”

9. Clearly the issue as to whether the amount was a loan or a deposit and as to whether Article 19 or Article 22 of the Limitation Act would be a disputed question of fact which would have to be gone into after the evidence has been led by the parties. The above judgment does not assist the petitioner.

10. In my opinion the issues raised by the petitioner regarding the limitation would be a disputed question of fact and the plaint was not liable to be rejected under Order VII Rule 11 CPC. Hence, there is no infirmity in

the impugned order passed by the trial court.

11. At this stage, learned counsel for the petitioner submits that the trial court has already framed issues on 06.02.2016 and that no issue has been framed regarding the limitation period. In these facts, liberty is granted to the petitioner to move an appropriate application under Order 14 Rule 5 CPC for framing of an appropriate issue regarding limitation.

With the above observations, the present petition is dismissed.

*Dasti.*

**JAYANT NATH, J**

**JULY 20, 2016/rb**