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

\+ CM(M) 821/2016

GURMEET SINGH ..... Petitioner

Through Mr.Gurmeet Singh, Advocate

versus

MANOJ YADAV & ANR ..... Respondents

Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

<u>O R D E R</u>

% 24.08.2016

<u>CM No. 30801/2016</u>*(exemption)*

Allowed subject to all just exceptions.

<u>CM(M) 821/2016 & CM No. 30802/2016</u>*(stay)*

1. By the present petition, the petitioner seeks to impugn the order dated 10.06.2016 by which the application of the petitioner under Order VII Rule 11 CPC was dismissed.

2. Respondent No.1 has filed a suit for recovery of Rs.5,50,000/-. As per the plaint, the respondents have entered into an Agreement to Sell with the petitioner for a property bearing No.E-493, Greater Kailash-II, New Delhi. A cheque for a sum of Rs.5,00,000/- dated 12.01.2010 drawn on Axis Bank Ltd., Rewari, Haryana was given by respondent No.1. A sum of Rs.6,00,000/- was also given in cash. The cheque was duly encashed in the account of the petitioner and a receipt dated 12.01.2010 was executed.

Subsequently, it is averred in the plaint that respondent No.1 received information that the petitioner is not in a position to transfer the property in the name of the respondents and that the said property actually belongs to one Sh.Gurdev Singh, S/o Sh.Nirmal Singh and the petitioner does not have any right, title or interest in the suit property. Thereafter, respondent No.1 lodged a complaint with the Police on 21.11.2011.

3. The trial court by the impugned order noted the submission of the petitioner in the written statement. The trial court also noted that as per the plaintiff, cause of action not only arose in December, 2009 but also January, 2010, August, 2010 and November, 2011. Hence, the suit filed on 08.05.2013 was within the limitation period. The trial court also noted that the fraud appeared to have been played in August 2010 when respondent No.1 discovered that the petitioner is not the owner of the said property. Accordingly, the trial court concluded that the limitation would run from the date of the knowledge of the fraud.

4. The learned counsel for the petitioner strenuously urged that the trial court has erroneously noted the defence of the petitioner whereas the trial court has to only consider the limitation based on the plaint and nothing else. He submits that the word fraud has not been used in the plaint and the trial court wrongly dismissed the application. He also relies upon a judgment of the Division Bench of this court in the case of ***Texem Engineering v. Texcomash Export, 2011 (124) DRJ 501 (DB).***

5. Under Order VII Rule 11 CPC the court has only to ascertain as to whether the plaint discloses a cause of action on a reading of the plaint and accepting the averments as correct.

6. The only two contentions in the present application were that the suit

is barred under law and it is also barred under Order VI Rules 2 and 4 CPC as material facts have not been stated in the plaint.

7. As far as limitation is concerned, it is obvious from the plaint that some payments have been made to the petitioner in August, 2010. Thereafter, it is also stated that respondent No.1 discovered that the petitioner does not have any title to the suit property and he visited the suit property. The date has not been mentioned in the averment. It is pleaded that thereafter respondent No.1 has lodged a complaint with the Police on 21.11.2011. Presumably the complaint with the Police has been lodged immediately after the discovery of the fact that the petitioner does not have any right, title or interest to the suit property. Suit was filed in May, 2013 i.e. within 3 years. On a reading of the plaint, it cannot be said that the suit is barred by limitation.

8. As far as the contention under Order VI Rules 2 and 4 is concerned, merely because some material facts have not been stated, could not be a ground for the suit being barred by law.

9. So far as reliance on the judgment of Division Bench of this court in the case of ***Texem Engineering v. Texcomash Export*** (supra) is concerned, the Division Bench held that in the said case the only contention is that the trial court while considering the application under Order VII Rule 11 CPC may not look at the defence raised by the defendant.

10. Clearly the contentions of the petitioner are misplaced. A reading of the plaint does not show that the suit is barred by limitation. It cannot be held that on non-compliance of the Order VI Rules 2 and 4 CPC as alleged, the plaint is liable to be rejected. There are no reasons to interfere with the impugned order. The petition is accordingly dismissed. All the pending

applications are also dismissed.

JAYANT NATH, J.

AUGUST 24, 2016/v