

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 138 of 2017**

- Arvind Sinha S/o Late Shri Badri Prasad Sinha, Aged About 52 Years R/o Shyama Bhawan Deviganj Ward, Ambikapur, P. S. And Tahsil Ambikapur, District Surguja (Chhattisgarh)..... (Defendant No. 1)

---- Petitioner**Versus**

1. Branch Manager, State Bank Of India (Previous State Bank Of Indore), Chandrakanta Bhawan, Deviganj Road, Ambikapur, District Surguja (Chhattisgarh).....(Plaintiff)
2. Vipin Prasad S/o Shyam Narayan, Aged About 45 Years At Present In The House Of Achal Sinha, Behind The Saraswati Shishu Mandir, Nehru Ward Ambikapur, P. S. And Tahsil Ambikapur, District Surguja (Chhattisgarh)..... (Defendant No. 2)

---- Respondents

For Petitioner: Mr. Prakash Tiwari, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****20.02.2017**

1. The present Writ Petition under Article 227 of the Constitution of India has been filed assailing the order dated 20.01.2017 passed by the Fourth Additional District Judge, Ambikapur in Civil Suit No. 1B/2011 renumbered as 4B/2014.
2. Vide the said impugned order the Court below has rejected the Application moved by the present petitioner defendant before the Court below under Order 14 Subrule 2 of Rule 2 of the C.P.C. vide the said application the Applicant had sought for the deciding the issue on limitation first before proceeding with the trial. The Court below rejected the said application on the ground that the

issue raised by the said applicant being question of facts and law would require evidence for proper adjudication and thus rejected the same.

3. Learned counsel for the Petitioner assailing the said order submits that the Court below ought to have first decided the preliminary issue as from the factual details provided by the plaintiff itself it is evidently clear that the suit was not maintainable as it was bared by the limitation and the Court should not have proceeded with the case. Thus, prayed for the quashment of the said order.
4. On perusal of the facts it reveals the suit in the present case was filed in the year 2011 i.e 20th January, 2011. The Respondents has entered appearance in the said application and submitted their reply. Subsequently the Application was made on additional issues at the behest of the present Petitioner -defendant which was allowed and the question of limitation was also framed. Thereafter, the matter was fixed for recording evidence of the Plaintiff. The plaintiff's evidence was recorded and the matter thereafter was fixed for recording of the evidence of the defendants. Subsequently after a couple of adjournments the defends instead of adducing evidence moved an application under Order 14 Subrule 2 of Rule 2 of the CPC which was rejected.
5. Having considered the order and on hearing the Counsel this Court is of the opinion that the impugned oder does not suffer from any infirmity or illegality for the reason that the Court below has not rejected the claim of the Petitioner, of the suit being

barred by limitation but that the Court has only held that the issue would also be considered after the evidence is recorded. Further it would also reflect that it is only after a couple of adjournments that the defendant took the application under order 14 Subrule 2 of Rule 2 of the CPC was moved. Therefore this Court exercising its supervisory jurisdiction under Section 227 does not find it to be a strong case for interference at this juncture.

6. The Petition thus being devoid of merits stands rejected. However it is expected that the Court below before dealing with the merits of the case while answering the issues would decide the preliminary issue first.
7. With the aforesaid observation the present Writ Petition stands rejected.

Sd/-

(P. Sam Koshy)
JUDGE