IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 211 OF 2016

1] B.N. Rathi Securities Pvt. Ltd.,
Through its Authorised Officer,
6-3-652, Kautilya, 4th Floor,
Amrutha Estate, Somajiguda,
Hyderabad

2] Harinarayan S/o Badrinarayan Rathi,
Age : major, Occu.: Managing Director,
M/s. B.N. Rathi Securities Pvt. Ltd.,
R/o : 6-3-652, Kautilya, 4th Floor,
Amrutha Estate, Somajiguda,
Hyderabad

3] Laxminivas S/o Ramniwas Sharma,
Age : major, Occu.: Independent Director,
M/s. B.N. Rathi Securities Pvt. Ltd.,
R/o : 6-3-652, Kautilya, 4th Floor,
Amrutha Estate, Somajiguda,
Hyderabad

4] Mr. K. Harishchandra Prasad,
Age : major, Occu.: Independent Director,
M/s. B.N. Rathi Securities Pvt. Ltd.,
R/o : 6-3-652, Kautilya, 4th Floor,
Amrutha Estate, Somajiguda,
Hyderabad .. Applicants
(Orig. Deft. no.1 to 4)

Vs.

Sonal W/o Sapankumar Rathi,
Age : 36 years, Occu.: Business,
R/o : 1-9-52, Naya Bazar,
Old Khawa market, Jalna,
Dist. Jalna .. Respondent/
(Orig. Plaintiff)

Mr. Pawan K. Lakhotiya, Advocate for the applicants
Respondent (party-in-person) through G.P.A. Shri Sapankumar Rathi

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CORAM : SUNIL P. DESHMUKH, J.
DATE : 16/01/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel Mr. Lakhotiya, appearing for the applicants/original defendants no.1 to 4 in regular civil suit no.128 of 2015 instituted by present respondent - sole / original plaintiff, being represented through power of attorney Mr. Sapankumar Rathi, has been allowed to represent cause of his wife, since he is considered to be competent and would be able to give assistance to the court and upon further undertaking that he would not make any objectionable averments / allegations or use un-parliamentary language and follow the court decorum.

2. Learned counsel for the applicant Mr. Lakhotiya with quite some vehemence submits that the dispute is with regard to entry in the accounts maintained with defendants by the plaintiff. The case is that on 31/3/2011, an amount of Rs.80,500/- is shown to have been debited from the account of plaintiff and objection had been taken by her that the same being unauthorised and illegal and the amount be

returned with interest. The correspondence in this respect went on for quite a while between the parties. A notice had been issued by the plaintiff around September, 2011 and the same had been replied in October, 2011 by the defendants rejecting the request under the notice. Relying upon article 2 of the Limitation Act, the suit being filed on 12/3/2015, he submits that bare perusal of plaint would indicate that the suit is barred by law of limitation. He further contends that the application exhibit 20 is filed on behalf of the defendants overbearingly invoking Order VII Rule 11, has not been properly appreciated by the trial court. According to him, trial court ought to have considered that the case is squarely covered by clauses (a) and (b) of Order VII, Rule 11 of Code of Civil Procedure, as the plaint does not disclose cause of action and from the statements appearing in the plaint, it is grossly outside the period of limitation contained under article 2 of the Limitation Act and as such, the same is barred by limitation.

3. Countering the aforesaid submissions, power of attorney holder husband of the plaintiff points out averments in the plaint, and contends that the cause of action is a bundle of facts and various facts disclose that cause of action had accrued to the plaintiff to institute the proceedings. He further refers to that despite refusal to comply with notice, a cheque had been sent to the plaintiff with a meagre amount in March, 2012, as such, liability had in-fact been

accepted by the defendants. He submits that not only this, but there are several other aspects which will indicate that the suit is not at all barred by period of limitation, as has been appreciated by the trial court.

4. Perusal of the impugned order passed by trial court under exhibit 20 shows that trial court has been alive to that the plaintiff has referred to cause of action in the plaint and also has referred to the cause of action is stated to have arisen also in March, 2015 and it is the contention of the plaintiff that the same is still subsisting. The trial court has also referred to the dates of issuance of cheque and the date when the cheque is received and realization of the same and further correspondence made by the plaintiff and further to that issue of limitation is a mixed question of law and fact and is required to be decided finally. The trial court, as such considered that it cannot be said that the plaint is amenable to exercise of powers under Order VII Rule 11 of the Code of Civil Procedure.

5. Having regard to the aforesaid submissions and legal position that while matter is to be considered pursuant to order VII, Rule 11, plaint averments only are germane without addition to or subtraction from the same, it does not appear that it can be conclusively determined at this stage that the suit is bad for non-disclosure of cause of action or can be said to be barred by limitation.

Appreciation by the trial court in this respect does not suffer any infirmity. Civil Revision Application thus stands rejected. Rule stands discharged.

[SUNIL P. DESHMUKH]
JUDGE

arp/