

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.38 OF 2017

M/s. Villayati Ram Mittal	... Applicant
Vs	
Shri Madhav Dattatray Bhawe	... Respondent
...	

Mr. Chaitanya Bhandarkar for the Applicant.
Mr. R. S. Apte, Senior Advocate a/w Mr. Saurabh Oka for the Respondent.

CORAM : M. S. SONAK, J.
DATE :24 NOVEMBER, 2017

P.C. :

1. Heard Mr. Chaitanya Bhandarkar for the Applicant–Defendant and Mr. Apte along with Mr. Oka for the Respondent-Plaintiff.
2. The challenge in this Civil Revision Application is to the order dated 22nd September 2016 by which the learned Trial Judge had dismissed the Applicant's application seeking rejection of plaint under Order VII Rule 11 of the Civil Procedure Code.
3. The Applicant's application under Order VII Rule 11 has to be appreciated for its brevity but criticized for its lack of particulars. The two grounds on which rejection of the plaint was sought for, reads as follows:

- a. No cause of Action &
- b. Barred by law.”

4. Mr. Bhandarkar, learned counsel for the Applicant, however, valiantly submits that the suit discloses no cause of action and further, no permission was obtained by the trustees from the Charity Commissioner before the institution of suit. He further submits that the suit is barred by limitation and such plea, was raised in the written submission filed before the learned Trial Judge. He also points out that in terms of Section 3 of the Limitation Act, it is the duty of the Court to dismiss a suit which is barred by limitation irrespective of whether or not the defence of limitation has been raised.

5. Mr. Apte, the learned senior Advocate for the Respondent defends the impugned order by pointing out that serious power under Order VII Rule 11 of the CPC to reject the plaint cannot be exercised on basis of an application which is totally lacking in particulars.

6. In so far as, the grounds relating to lack of permission from the Charity Commissioner or the disclosure of cause of action is concerned, the same are not made out clearly and therefore, there is no reason to interfere with the impugned order. In fact, from the perusal of the application dated 8th August 2016 not even a ground that the plaint discloses no cause of action has been made out.

7. In so far as the issue of limitation is concerned, the obligation is on the Court to determine whether the suit is indeed barred by limitation or not. However, powers under Order VII Rule 11 of the CPC can be exercised if, the issue of limitation, is not a mixed question of law and fact. If the issue is a mixed question of law and fact then, ordinarily, the issue of limitation, must be tried along with all the other issues in the suit.

8. Since, the reasoning reflected in paragraph 14 of the impugned order is not correct and since the learned Trial Judge has even declined to go into the issue of limitation on the ground that such an issue is not raised in the application, the Applicant, is entitled to some limited relief.

9. Therefore, although, the impugned order is not being interfered with, liberty is granted to the Applicant to file a proper application within a period of two weeks from today setting out the basis on which the Applicant contends that suit is ex-facie barred by limitation and a case is made out for exercise of power under Order VII Rule 11 of the CPC. It is clarified that such application shall be restricted only to the ground of bar of limitation. If such application is filed within two weeks from today, the Respondent shall have two weeks to respond to the same.

The learned Trial Judge is directed to dispose of such application on its own merits and in accordance with law within a period of six weeks thereafter.

10. It is made clear that this Court has not gone into the merits of the matter, therefore all contentions of all parties are kept open.

11. The Civil Revision Application is disposed of in the aforesaid terms.

12. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)