

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4898 of 2017

ORDER :

Respondents' proof of service filed, but they did not appear.

2. Heard learned counsel for the petitioner/defendant No.3, who is unsuccessful petitioner before the lower Court in I.A.No.777 of 2016, which is an application to reject the plaint as barred by law under Order VII Rule 11 clause (d) C.P.C. that was ended in dismissal after contest on 27.07.2017.

3. The contention is that the so-called giving of the money is in 2011 in claiming the recovery of the amount of Rs.20,00,000/- with interest from 30.08.2011 when given and there was a divorce between the couple on 21.01.2015 and from the date of divorce, the plaint averments with cause of action says as in three years to be computed, however, three years period is to be computed from the date of giving on 30.08.2011, thereby the suit claim is barred by end of August 2014.

The trial Court dismissed with observation that during subsistence of marital relationship whether limitation counts or not, but for from the date of divorce if at all from the cause of action pleaded in the plaint as it is a mixed question of fact and law, the plaint cannot be rejected with any finding of barred by law. It is same impugned. There is nothing to interfere with the said observation of the lower Court for not a private lending to count period of limitation from the date of lending. It is between wife and husband any giving of amount and/or entrustment of the amount whether limitation starts or not only from

the purpose of giving and animus in giving including as to entitlement of interest a factual finding required in applying any law. Thus, without prejudice to any such contest to urge before the trial Court, if necessary, to formulate a specific issue as suit claim barred or not. Hence, there is nothing to interfere with the said order much less to say to stay the proceedings.

4. Accordingly and in the result, the civil revision petition is disposed of.

Miscellaneous petitions pending, if any, shall stand dismissed.

No order as to costs.

27th November 2017.

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Dr. B. SIVA SANKARA RAO, J

