

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5138 of 2016

ORDER :

Impugning the dismissal of I.A.No.1061 of 2015 in O.S.No.181 of 2015 on the file of the XI-Additional Chief Judge, City Civil Court, Hyderabad, to reject the plaint claiming as barred by limitation, this revision is maintained by the unsuccessful defendants against the sole plaintiff.

2. Heard both sides at length.

3. The law is fairly settled that if the plaint discloses the cause of action and the suit claim is within time, there is nothing to reject invoking Order VII Rule 11(d) C.P.C. No doubt, Section 3 of the Indian Limitation Act, 1963, imposes duty on the Court to determine whether the suit claim is barred by limitation or not irrespective of no plea raised by the defendants. Such power and duty practically always left open till pronouncement of judgment to the Court. Here, the application was dismissed saying prima facie there is no material from reading of the plaint that the suit claim is barred by limitation. From that observation, while sitting in revision there is nothing to interfere, but for such a defence is left open to raise in the written statement. Since stated raised in the written statement filed, the trial Court while hearing on issues frame a specific issue on that aspect and if necessary from any application filed as contemplated by Order XIV Rule 2(b) read with Order XX Rule 5 C.P.C. determine the same as a preliminary issue.

4. With the above observation, the revision is disposed of.
5. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

3rd January 2017.

mar

