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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 85/2017 & CM Nos.2996-97/2017**

RAMPHAL

..... Petitioner

Through Mr.Rajat Aneja, Ms.Shifa Nagar &
Ms.Rashmi Verma, Advocates

versus

CHINTELS EXPORTS PVT LTD

..... Respondent

Through Mr.Parvinder Chauhan & Mr.Nitin
Jain, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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25.01.2017

CM No.2997/2017(exemption)

Allowed subject to all just exceptions.

CM(M) No.85/2017 & CM No.2996/2017(stay)

1. The dispute in the present petition pertains to the contention of the petitioner/defendant that the suit for specific performance for agreement to sell dated 25.11.1994 filed by the respondent/plaintiff is barred by law.
2. A perusal of the impugned order dated 22.11.2016 shows that the trial court has heard the arguments on the point of maintainability of the suit based on oral submission of the petitioner that the suit is barred by limitation. Having heard the arguments, the trial court concluded that the issue of limitation is a mixed question of law and fact and an issue on this needs to be framed along with other issues and needs to be decided upon

after evidence is led.

3. The learned counsel for the petitioner has strenuously urged that merely on the pleadings of the case, he can demonstrate that the suit is barred by limitation.

4. The facts as narrated in the present petition show that the submission of the petitioner of relying only on the averments of the petition appears to be prima facie misplaced. Agreement to sell is said to have been executed on 25.11.1994. Along with the agreement to sell certain other documents, namely, Affidavit, Possession Letter, GPA, Will etc. were also executed. It is the case of the petitioner that the said GPA was cancelled on 07.08.1997. Certain proceedings had been taken place before the consolidation officer whereby the respondent was declared as encumberer. Aggrieved by the said, the petitioner has filed a review petition before Financial Commissioner, Delhi and thereafter a writ petition before this court. Both the petitions have been dismissed by the respective courts. However, in the petition before this court, liberty was granted to the petitioner to move appropriate fora/ civil court. The petitioner filed a suit on 09.03.2011 allegedly pursuant to the direction of the High Court dated 16.12.2010. The respondent has also filed a suit on 09.03.2014.

5. Despite these complex facts, the petitioner insists that the issue is purely a question of law and can be decided without any evidence. However, a perusal of the impugned order dated 22.11.2016 would show that the trial court while concluding that the issue would be a mixed question of law and fact has failed to note any of the submissions of the parties. It has also not given any reason as to why the court reached the said conclusion.

6. In my opinion, it is appropriate that liberty be granted to the petitioner

to move an appropriate application at the time of framing of issues for framing a preliminary issue on the point of limitation on his contention that the limitation would be a pure question of law. In case, any such application is filed, the respondent is at liberty to oppose the same as per law. The trial court while adjudicating upon the same would not be bound by the order of the court dated 22.11.2016 stating that the issue involved is a mixed question of law and fact. The court would also not be influenced by any observations made herein.

With the above observation, the present petition stands disposed of. All the pending applications are also disposed of.

JAYANT NATH, J.

JANUARY 25, 2017/v