

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

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DATE OF DECISION: 17TH APRIL, 2017

+ CS(OS) No.96/2017, IA No.2514/2017 (under Order XXXIX Rules 1&2 CPC) & IA No.2515/2017 (under Order I Rule 10 CPC)

T. VENKAT RAM REDDY

..... Plaintiff

Through: Mr. Anupam Srivastava, Mr. Shikhar Sareen, Ms. Niharika & Mr. Vekat Reddy, Advs.

Versus

**BLUE CHIP CAPITAL SERVICES
PVT. LTD. & ANR.**

..... Defendants

Through: Mr. Sanjeev Puri, Sr. Adv. with Mr. Kamal Kumar, Adv. for D-2.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit for the reliefs of i) cancellation of registered Deed of Assignment dated 9th August, 2012; ii) cancellation of registered Supplementary Deed of Assignment dated 3rd September, 2012; iii) mandatory injunction directing the defendants viz. Blue Chip Capital Services Pvt. Ltd. (BCCSPL) and Religare Finvest Ltd. (RFL) to handover the original Deeds of Assignment for the purposes of cancellation thereof; and, iv) permanent injunction restraining the defendants from dispossessing the plaintiff from flat No.105 on the first floor of building known as "Silver Arch" at 22, Feroze Shah Road, New Delhi, pleading:

(a) that the plaintiff is the owner of the said flat vide registered Agreement to Sell and Power of Attorney in his favour;

- (b) that the plaintiff is one of the Directors / Promoters of M/s Deccan Chronicle Holding Ltd. (DCHL);
- (c) that the defendant no.2 RFL sanctioned Rs.200 crores in favour of DCHL as loan and disbursed the same;
- (d) that the defendant no.2 RFL being in a position to dominate the will of the plaintiff, obtained an unfair advantage by forcing the plaintiff to deposit the documents pertaining to the said flat with the defendant no.2 RFL on 8th June, 2002;
- (e) that the defendant no.2 RFL recalled the loan prematurely;
- (f) that DCHL was not in a position to repay the loan and was compelled to provide additional securities to defendant no.2 RFL and also asked the plaintiff to execute transfer documents in respect of the said flat, title documents whereof were already in possession of defendant no.2 RFL;
- (g) that the plaintiff was not willing therefor;
- (h) that the defendant no.2 RFL threatened to take coercive steps against DCHL and also assured the plaintiff that it only intended to create a document and not a sale deed with respect to the said flat, merely for securitising the loan and execution of such a document by the plaintiff with respect to the flat would be a mere formality for the sake of auditing; the plaintiff was further assured by the defendant no.2 RFL that the plaintiff would continue to enjoy the peaceful possession of the said flat and no exchange of money would take place between the concerned parties; believing the assurances of the defendant no.2 RFL, the plaintiff was induced in August, 2012 into executing the

Deed of Assignment and subsequently the Supplementary Deed of Assignment on 3rd September, 2012 in favour of the defendant no.1 BCCSPL which was introduced to the plaintiff for the first time by the defendant no.2 RFL;

- (i) that the Deed of Assignment was executed for a mere consideration of Rs.1.5 crores which was increased to Rs.7,13,70,000/- via Supplementary Deed dated 3rd September, 2012, though the market value of the flat is approximately Rs.10 crores;
- (j) that the transaction of Deed of Assignment and Supplementary Deed of Assignment was a sham which is evident from the fact that even the negligible consideration amount was not transferred to the account of the plaintiff and as promised, the plaintiff continued to enjoy the possession of the said flat;
- (k) that on 21st April, 2016, attempt was made to forcibly dispossess the plaintiff and his family from the said flat;
- (l) that on account of non-payment of the loan advanced by defendant no.2 RFL to DCHL, the dispute was referred for adjudication by way of arbitration; the defendant no.2 RFL in its rejoinder filed in March, 2014 in the said proceedings stated that nine out of the total immovable properties mortgaged in favour of the defendant no.2 RFL had been transferred/sold to undisclosed persons and that proceeds from selling one property in Delhi was received by defendant no.2 RFL which amount was adjusted towards the account of DCHL;
- (m) that again on 28th April, 2016 and 2nd May, 2016 attempts were made to dispossess the plaintiff from the said flat;

- (n) that the persons attempting to dispossess the plaintiff are claiming to have copies of the Deeds of Assignment; that since the only persons privy to the information relating to the Deeds of Assignment were the parties to the same, hence it is clear that it is the defendants who are attempting to dispossess the plaintiff; and
- (o) that the defendant no.2 RFL, under the garb of helping the plaintiff and DCHL, managed to influence the plaintiff into executing the Deeds of Assignment which is clear proof of the fact that the entire process was well thought out conspiracy of the defendants wherein they *inter alia* appropriated massive amounts with an intention of removing the plaintiff and his family from lawful possession of the flat.

2. The suit instituted on 6th February, 2017 came up before this Court first on 27th February, 2017 when it was found that though the suit had been filed as a fresh suit but in fact the plaintiff had earlier filed the suit before the Court of the District Judge and had thereafter sought amendment of the plaint and upon the plaint after amendment being found to be beyond the maximum pecuniary jurisdiction of the Court of the Additional District Judge (ADJ), was returned to the plaintiff for filing in this Court. However the plaint filed before this Court was not the plaint which was so returned to the plaintiff and the plaint which was returned to the plaintiff in fact was filed by the plaintiff as a document accompanying the suit.

3. The counsel for the defendant no.2 RFL also appeared on 27th February, 2017 and complained that though a caveat had been filed but advance copy had not been served. It was further contended that the cost

imposed on the plaintiff while allowing the amendment of the plaint before the ADJ had not been paid.

4. In the circumstances, the counsel for the plaintiff was directed to supply copy of the paper book to the counsel for the defendant no.2 RFL and to deposit the cost and the suit posted to 3rd March, 2017 for consideration.

5. The senior counsel appearing for the defendant no.2 RFL on 3rd March, 2017 contended that the suit claim is barred by time and thus the summons even of the suit ought not to be issued. It was further contended that the plaintiff, in para no.19 of the plaint has admitted being aware of the exact nature of the Deeds being executed and thus cannot seek setting aside thereof and plaint does not disclose any right for rescission of the Deeds.

6. On 3rd March, 2017 it was enquired from the senior counsel for the defendant, whether the amount claimed by the defendant no.2 RFL in the arbitration proceedings was after adjustment of the amounts towards the consideration of the Deeds of Assignment.

7. The senior counsel for the defendant no.2 RFL replied in the affirmative.

8. It was further informed that the claim in the arbitration proceedings was as far back as in the year 2012. Therefrom it appeared that the plaintiff, if not on the date of execution of the Deeds of which cancellation is sought, at least on receipt of claim of the defendant no.2 RFL in the arbitration proceedings would have knowledge of the stand of the defendant no.2 RFL of the flat having already stood assigned to defendant no.2 RFL. It was thus enquired from the counsel for the plaintiff as to how the suit filed on 6th February, 2017 was within limitation.

9. The counsel for the plaintiff sought time to address. He was directed to also file copies of the pleadings in the arbitration proceedings including the contract and personal guarantees furnished by the plaintiff.

10. The counsel for the plaintiff on 3rd March, 2017 was also put to notice that as per my understanding, the date of institution of this suit, even if after return of the plaint by the ADJ, is to be considered as the date of institution in this Court and that if the counsel wanted to contend otherwise, he should on the next date come prepared therefor.

11. It was yet further enquired from the counsel for the plaintiff on 3rd March, 2017 that once according to the plaintiff also the Deeds were executed by way of security for the loan availed, how would this suit for cancellation of the Deeds be maintainable till the loan is satisfied or is held in the arbitration proceedings to have stood satisfied.

12. Attention of the counsel for the plaintiff on 3rd March, 2017 was invited to Sections 91 and 92 of the Evidence Act, 1872 and it was enquired as to how could the plaintiff be permitted to plead and prove the purport of the registered documents to be something other than what it appears on the face of the documents.

13. The counsel for the plaintiff today, on the aspect of limitation, has argued i) that the defendant no.2 RFL filed the claim petition in the arbitration proceedings in January, 2013; ii) that in the said claim petition, though the defendant no.2 RFL pleaded creation of equitable mortgage by deposit of title deeds of the said flat but while pleading transfer of certain other properties title deeds with respect where to were also deposited by way of equitable mortgage in favour of the defendant no.2 RFL, mention was not

made of transfer of title in the subject flat; iii) that the plaintiff thus, from the said claim petition could not know of the stand of the defendant no.2 RFL of the title in the flat having stood transferred under the Deeds of Assignment dated 9th August, 2012 and Supplementary Deed of Assignment dated 3rd September, 2012; iv) that the plaintiff filed his reply dated 14th March, 2013 to the claim petition in the arbitration proceedings and to which a rejoinder was filed by defendant no.2; v) that the plaintiff filed an amended reply dated 18th February, 2014 in the arbitration proceedings to which a rejoinder dated 19th March, 2014 was filed by the defendant no.2 RFL; vi) that it was in the said rejoinder to the amended reply that the defendant no.2 RFL pleaded that the subject flat was sold to third party and proceeds from which sale was received by the defendant no.2 and which amount was adjusted in the account of DCHL; vii) that thus the plaintiff came to know of the stand of the defendant no.2 RFL qua the said Assignment Deeds for the first time on 19th March, 2014 from the rejoinder to the amended reply of the plaintiff; viii) that the plaintiff instituted the suit in the Court of the District Judge on 8th June, 2016; ix) that the Court of the ADJ ordered return of the plaint to the plaintiff on 9th January, 2017; x) that the suit filed in this Court on 6th February, 2017 is within three years of 19th March, 2014 being the date of the rejoinder of defendant no.2 to the amended reply of the plaintiff in the arbitration proceedings.

14. I have enquired from the counsel for the plaintiff that though the defendant no.2 RFL in the claim petition filed in January, 2013 may not have expressly pleaded transfer of the subject flat but whether in the

computation of the amount claimed, adjustment of the price of the flat was given/shown.

15. The counsel for the plaintiff states that no particulars in this respect were given in the computation of the amount claimed also.

16. The senior counsel for the defendant no.2 RFL, on the aspect of limitation, has argued i) that the plaintiff, while filing copies of the arbitration proceedings has suppressed material pleadings and has today also during the hearing misrepresented facts; ii) that though the counsel for the plaintiff in his arguments has referred to the amended reply filed by the plaintiff to the claim petition of the defendant no.2 RFL in arbitration proceedings, but has suppressed the application filed by the plaintiff for amendment of its reply; iii) a copy of the said application filed on behalf of the plaintiff for amendment of its reply in the arbitration proceedings is handed over in the Court and is taken on record; iv) that the plaintiff in the said application dated 13th January, 2014 for amendment of its reply to the claim petition in the arbitration proceedings has pleaded as under:

“N. It is therefore, humbly submitted that out of Rs.540 Crores which were borrowed the Claimant from time to time, the Respondents have already repaid Rs.440 Crores along with an excess interest. The balance of Rs.100 Crores also stands satisfied as the Claimant through the fraudulent transfer / sale of the following immovable and movable assets worth Rs.280 crores (approximately):

- i. Land and buildings at a best and prime location in India viz. on the beach Road Vizag;
- ii. Land and Buildings at Karimnagar;
- iii. Land and buildings at Nellore;

- iv. Land and buildings at Ananthapur;
- v. **Flat in Silver Arch Apartments Feroz Shah Road in New Delhi;**
- vi. Property at Alwal, R R District, Hyderabad;
- vii. 3 Crores shares of the Respondent No.1 Company;
- viii.”

(emphasis supplied)

v) that it is abundantly clear from the aforesaid plea of the plaintiff himself on 13th January, 2014 that the plaintiff also understood the Deed of Assignment as transferring his rights in the flat and was in fact pleading that the amounts claimed by the defendant no.2 RFL in the arbitration proceedings in fact stood paid to the defendant no.2 RFL by adjustment of the price of the subject flat.

17. The counsel for the plaintiff has not controverted filing of the application dated 13th January, 2014 for amendment.

18. The counsel for plaintiff however contends that the plaintiff has not intentionally suppressed the same and did not file the same as the plaintiff in the order dated 3rd March, 2017 was directed only to file copies of the pleadings in the arbitration.

19. The aforesaid contention of the counsel for the plaintiff cannot be accepted. It is duty of the plaintiff to file and disclose all relevant documents along with the plaint. The occasion for this Court to direct so on 3rd March, 2017 arose because the plaintiff failed in fulfilling the requirement of law. The direction to file pleadings in the arbitration proceedings was in the context of what was urged on that date. The counsel

for the plaintiff was fully aware as to in what context the documents were required to be filed i.e. to determine whether the plaintiff from the said arbitration proceedings had notice of the claim of the defendant no.2 RFL qua the Deeds of Assignment and whether the suit claim has been made beyond three years therefrom. The counsel for the plaintiff fully understanding the same has made the arguments as recorded above and in which arguments the aforesaid application for amendment is a necessary ingredient and which was suppressed.

20. The senior counsel for the defendant no.2 relies on ***S.P. Chengalvaraya Naida (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs.*** (1994) 1 SCC 1 to contend that the plaintiff, on account of such suppression alone, is liable to be non-suited.

21. The senior counsel for the defendant no.2 RFL has further argued i) that the plaintiff in the plaint as originally filed before the Court of the ADJ did not mention the supplementary Deed of Assignment dated 3rd September, 2012 and did not claim any relief with respect thereto; ii) that the plaintiff, in the plaint filed in this Court, for the first time introduced the Supplementary Deed of Assignment dated 3rd September, 2012; iii) that the plaintiff, in para no.19 of the plaint as filed in this Court admits execution of Deeds of Assignment; iv) that the plaintiff, in para 20 of the plaint as filed in this Court, admits execution of Deeds of Assignment; v) that the plaintiff thus, on the date of execution on 9th August, 2012 and 3rd September, 2012 of the Deed of Assignment and supplementary Deed of Assignment respectively, was fully aware of the same assigning the title of the plaintiff in the flat in favour of the defendant no.1 BCCSPL; vi) that the plaintiff, in

para no.30 of the plaint as filed in this Court has not pleaded cause of action for the suit to have accrued to him when he was allegedly unlawfully induced or on receipt of rejoinder dated 19th March, 2014 to the amended reply of the plaintiff in the arbitration proceedings, but has claimed the cause of action to have accrued to him on 21st April, 2016 when he was sought to be dispossessed from the subject flat; vii) that the plaintiff has falsely argued before this Court that the cause of action accrued on receipt of rejoinder dated 19th March, 2014 in the arbitration proceedings and which is not the pleaded case in the plaint. Reliance is placed on ***Ramti Devi Vs. Union of India*** (1995) 1 SCC 198.

22. The plaintiff, in the plaint, as aforesaid, has pleaded that the plaintiff was induced into execution of the Assignment Deeds on the representation of defendant No.2 RFL that the same were merely to secure the loan and a mere formality and not intended to be acted upon as assigning title of the plaintiff in the flat aforesaid in favour of defendant No.1 BCCSPL. The plaintiff has further pleaded and the counsel for the plaintiff has argued that the Deeds of Assignment divesting title of the plaintiff in the flat are a sham. On the said pleas, reliefs aforesaid are claimed. It is further the plea that the Deeds of Assignment were for a sum of Rs.7,13,70,000/- whereas the market value of the subject flat is approximately Rs.10 crores.

23. However contrary thereto, in the application dated 13th January, 2014 supra, the plaintiff has pleaded that the loan due to defendant no.2 RFL stood repaid by transfer / sale of the subject flat and adjustment of the price thereof. The same shows that the plaintiff understood the Deeds of Assignment as per their terms and there was no misunderstanding on the part

of the plaintiff. The plaintiff, in the application dated 13th January, 2014 did not plead that though Deeds of Assignment were executed, but were not to be acted upon or were a sham. If it was so, there would have been no question of repayment of the loan by adjustment of the price of the subject flat.

24. It is a settled principle of law that a party to a litigation cannot be permitted to blow hot and cold and take inconsistent stands at different points of time to serve its purpose at that time. The plaintiff, when loans were sought to be recovered from him, to support his defence of the loan having been repaid, pleaded adjustment of consideration for assignment of title in the subject flat in repayment of loan. The plaintiff having taken such plea, is now barred from challenging the assignment. There is no explanation also whatsoever for such inconsistent stands. Rather, the plaintiff concealed his earlier stand from this Court and indeed portrayed a false case of the defendant No.2 RFL having pleaded assignment in rejoinder aforesaid and pleaded that as the cause of action for the suit.

25. Now that it emerges that it was so the stand of the plaintiff himself, the cause of action for the suit disappears and the plaint is liable to be rejected on this ground alone.

26. As far as the plea of consideration of Rs.7,13,70,000/- for assignment being insufficient as the market value is Rs.10 crores, per Section 25 of the Contract Act, 1872 an agreement is not void merely because the consideration is inadequate. In fact the senior counsel for the defendant No.2 RFL disputed the market price of the subject flat to be Rs.10 crores and

without prejudice to his contentions suggested the plaintiff can still purchase it for the suggested price of over Rs.10 crores.

27. On the aspect of limitation, the counsel for the plaintiff, while not disputing the position in law that the date of institution of the suit would be the date of institution in this Court and not the institution in the Court of the District Judge from where the plaint was returned, contends that the suit filed in the Court of District Judge on 8th June, 2016 was within three years from 13th January, 2014, being the date of the application for amendment of the reply supra filed by the plaintiff.

28. The aforesaid contention of the counsel for the plaintiff suffers from inherent inconsistency. It has been held in ***Sri Amar Chand Inani Vs. Union of India*** (1973) 1 SCC 115 that suit instituted in a Court, after return of plaint by the Court in which the suit was earlier instituted, is not a continuation of the suit plaint wherein was returned and the fact that the plaintiff may take advantage of Section 14 of the Limitation Act, 1963 would not affect the question of the date of institution. To the same effect is ***Harshad Chimanlal Modi (II) Vs. DLF Universal Ltd.*** (2006) 1 SCC 364 where it was further held that presentation of plaint in correct Court after its return is not a 'transfer' and the correct Court cannot take up proceedings from the stage at which they stood in the wrong Court, since the proceedings were *void ab initio*. Again, in ***Oil and Natural Gas Corporation Limited Vs. Modern Construction and Company*** (2014) 1 SCC 648, it has been held that after return of plaint, presentation thereof before Court of competent jurisdiction amounts to institution of a fresh suit.

29. Moreover, the plaintiff is wrongly counting the limitation as from the date of the application i.e. 13th January, 2014. 13th January, 2014 is the date when the plaintiff applied for amendment of his reply, to take such a plea in the arbitration proceedings. The plaintiff in the application dated 13th January, 2014 did not state that he had learnt of the true nature of the Deeds of Assignment on that date only. Rather, the ground taken for seeking amendment to take the said plea was of the said fact having remained to be pleaded in the reply filed earlier. In law, amendments to pleadings relate back to the date of original filing of the pleading amended. Reference can be made to *L.C. Hanumanthappa Vs. H.B. Shivakumar* (2016) 1 SCC 332 and *Sampath Kumar Vs. Ayyakannu* (2002) 7 SCC 559.

30. It thus follows that the plaintiff, from the date of execution of the Deeds on 9th August, 2012 and 3rd September, 2012 understood the true nature thereof. Not only would the plaintiff thus have no cause of action for the relief of cancellation and injunctions claimed in the suit, but the cause of action in such case would arise on 9th August, 2012 and 3rd September, 2012 and the suit filed on 8th June, 2016 in the Court of the District Judge would also be barred by time.

31. Article 58 of the Schedule to Limitation Act, for a suit to obtain any other declaration (than for which provision is made in Articles 56 & 57 which are not applicable) provides a limitation of three years commencing from the date when the right to sue “first accrues”. Article 59, for a suit to cancel or set aside an instrument or for rescission of a contract provides a limitation of three years commencing from when the facts entitling the plaintiff to have the instrument cancelled or to have a contract set aside “first

become known” to the plaintiff. The plaintiff here, not only has in earlier proceeding aforesaid admitted knowledge of correct nature of Assignment Deeds which are sought to be cancelled / set aside, from the date of execution thereof but even otherwise, from the date on which cause of action according to plaintiff has accrued, has filed suit in this Court beyond the period of three years.

32. Though in view of the above, need is not felt but for the sake of completeness, I may record that I have enquired from the counsel for the plaintiff as to how the plaintiff can take the benefit of the institution of the suit in the Court of the District Judge when the counsel for the plaintiff agrees with the legal position that the suit would be deemed to have been instituted on the date of institution in this Court.

33. The counsel for the plaintiff states that the plaintiff in such case would have benefit of Section 14 of the Limitation Act.

34. Having not found any plea to the said effect in the plaint and the plaint being also not accompanied with any application under Section 14 of Limitation Act, it has been enquired from the counsel for the plaintiff.

35. The counsel for the plaintiff agrees that in the plaint as filed in this Court, neither is there any reference to Section 14 of the Limitation Act nor have ingredients thereof been pleaded. He however contends that the plaintiff can invoke the same and the said aspect is to be considered after issuance of summons of the suit.

36. I am unable to agree on the said aspect also.

37. For a plaintiff to invoke Section 14 of the Limitation Act, it is necessary to plead that the plaintiff has been prosecuting with due diligence

another civil proceedings against the defendant relating to the same matter in issue and in good faith and that the Court in which the said civil proceedings were pending, from defect of jurisdiction or other cause of like nature, is unable to entertain it. Without the plaintiff pleading so, the suit cannot be entertained on an oral plea of the plaintiff being entitled to invoke Section 14 of the Limitation Act.

38. The ingredients required to be satisfied/established before invoking Section 14 of the Limitation Act, of due diligence and good faith, are ingredients of fact and proof whereof cannot be permitted without a pleading to that effect. Without any pleading of the ingredients of Section 14 of the Limitation Act, the opposite party has no opportunity to rebut the same. Without a plea of such ingredients in the pleadings, the question of framing any issue also would not arise and evidence cannot be led beyond the issues. Supreme Court in *State of Bombay Vs. Ram Krishna Govind Bhanu* AIR 1958 SC 767 held that the burden lies on the plaintiff to satisfy the conditions of Section 14 and further held the Courts below in that case to be in error in expecting the contesting defendants to adduce evidence to the contrary. It was reasoned that when the plaintiff has not satisfied the initial burden which lay on him to prove his case within Section 14, the burden would not shift to the defendant to show to the contrary.

39. A Full Bench of the Madras High Court in *Sri Kasikananda Gnanacharya Swamigal Vs. Saravana Perumal Pillai* AIR 1941 Mad 319 held that when a person is claiming the benefit of Section 14 of the Limitation Act, he must prove that he acted in good faith in instituting the earlier proceedings; Order VII Rule 6 of CPC states that where the suit is

instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption is claimed; this must mean that when a suit has been filed beyond the period allowed by law, the burden of proving that there is ground for exemption from limitation is on the plaintiff. Supreme Court also in ***Ittyavira Mathai Vs. Varkey Varkey*** AIR 1964 SC 907 proceeded on the premise that if the suit is barred by time, when it is instituted in the Court, a plea of Section 14 of the Limitation Act should be taken in the plaint. The same is the flavour of ***Ketan V. Parekh Vs. Special Director, Directorate of Enforcement*** (2011) 15 SCC 30 where an application under Section 5 of the Limitation Act was not permitted to be treated as under Section 14 of the Limitation Act. The Privy Council also as far back as in ***Lala Kalyan Mal Vs. Ahmad-Ud-Din Khan*** AIR 1934 Privy Council 208, though in the context of Section 18 of the Limitation Act, held that where a plaint is filed after the period of limitation in respect of a particular relief and the plaintiff relies upon Section 18 of the Limitation Act and contends that by reason of the fraud of the other party he was prevented from instituting the suit within time, the provision of Order VII Rule 6 of CPC must have been complied.

40. I am thus of the view that in the absence of any ground of exemption under Section 14 of the Limitation Act being pleaded, the plaintiff would not be allowed to show the ground of exemption at the trial by putting in evidence any document to that effect. The High Court of Andhra Pradesh also in ***Dondapati Puttama Naidu Vs. Perugu Venkata Reddi*** (1996) 2 Andh WR 206 held that it is obligatory under Order VII Rule 6 of CPC for the plaintiff to mention all the necessary circumstances which entitle him to

claim exclusion of the time spent in prosecuting his claim in a wrong Court and in the absence thereof the plaint cannot be entertained.

41. The counsel for the plaintiff then states that the plaintiff can always amend the plaint.

42. A suit which is not maintainable today and maintainability whereof is being considered today after putting the plaintiff to notice on earlier date, cannot be entertained to enable the plaintiff to invoke Section 14 of the Limitation Act. Though on 3rd March, 2017 also, the counsel for the plaintiff was put to notice on this aspect but has not taken any steps.

43. The senior counsel for the defendant no.2 RFL is also correct in his submission that the plaint, on a meaningful reading thereof does not disclose any cause of action. The plaintiff admits to execution of the Deeds of Assignment and has been unable to disclose any cause of action for setting aside thereof. Reliance placed on *Ramti Devi* supra is apposite. It was held therein that since the sale deed was executed for valuable consideration to discharge pre-existing debts and is a registered document, Section 92 of the Evidence Act prohibited adducing oral evidence to contradict the terms of the recital therein and that the suit necessarily had to be laid within three years from the date on which the sale deed was executed and registered.

44. The counsel for the plaintiff lastly contended that even if the plaint is not to be entertained qua the reliefs claimed of cancellation of the Deeds of Assignment, the plaintiff being in possession of the property, the possession of the plaintiff is to be protected.

45. Needless to state, the senior counsel for the defendant no.2 RFL opposes.

46. The plaintiff, in the arbitration proceedings in response to the claim of the defendant no.2 RFL having pleaded transfer of the subject flat and adjustment of price thereof in repayment of the loan account, cannot now seek to protect its possession. Even otherwise, the plaintiff from his conduct as detailed hereinabove has disentitled himself to any discretionary relief.

47. The associate counsel for the plaintiff mentioned the matter subsequently and stated that “the plaintiff could not have pleaded Section 14 of the Limitation Act as this was a case of return of plaint and not institution of fresh suit”.

48. I am unable to understand the purport of the said submission. The plaintiff, as aforesaid, before this court has not filed the plaint which was returned to him and has filed a fresh plaint. The plaintiff therein could have pleaded Section 14 of the Limitation Act. Alternatively, even if the plaintiff were to file the returned plaint, the plaintiff could have always filed an application invoking Section 14 of the Limitation Act. Be that as it may, in view of the other reasons given above, no reconsideration is called for.

49. I therefore hold the plaint to be not disclosing any cause of action for the reliefs claimed of cancellation of the registered Deed of Assignment dated 9th August, 2012 and registered supplementary Deed of Assignment dated 3rd September, 2012 and the relief claimed to be also barred by time as per averments in plaint and documents filed therewith and the plaintiff for the reasons aforesaid is not entitled to the relief of permanent injunction. Need to admit / entertain the suit is thus not felt.

50. The suit is dismissed. The plaintiff, towards costs of the suit and for having indulged in abuse of the process of the Court and suppression of

material documents is also burdened with cost of Rs.1 lac payable to the defendant no.2 RFL within four weeks hereof.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J.

APRIL 17, 2017/‘gsr’
(corrected & released on 10th May, 2017)

