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

CM(M) 567/2017 & CM No.19514/2017

UNITED SPIRITS LIMITED

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Adv. with Mr.
A.S. Mathur, Ms. Nimita Kaul & Mr.
Harsh Kumar, Advs.

Versus

MAHINDER KUMAR GUPTA

..... Respondent

Through: Mr. Raman Kapur, Sr. Adv. with Mr.
Aviral Tiwari, Adv.

AND

+ CM(M) 566/2017 & CM No.19509/2017 (for stay)

UNITED SPIRITS LIMITED

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Adv. with Mr.
A.S. Mathur, Ms. Nimita Kaul & Mr.
Harsh Kumar, Advs.

Versus

LAKHAN PAL LIMITED

..... Respondent

Through: Mr. Raman Kapur, Sr. Adv. with Mr.
Aviral Tiwari, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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13.07.2017

**CM Nos.19515-16/2017 in CM(M) 567/2017 and CM No.19510-11/2017
in CM(M) 566/2017 (both for exemptions)**

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

CM(M) 567/2017 & CM(M) 566/2017

1. These petitions under Article 227 of the Constitution of India impugn the order of learned Additional District Judge (ADJ) of instead of hearing

arguments on the issues in the suits ordered to be treated as preliminary issues, posting the matter for the respondents' / plaintiffs' evidence merely by observing that the issue of limitation which was ordered to be treated as a preliminary issue was a mixed question of law and fact.

2. Though the petitions are not accompanied with copies of the plaint in the suits but on asking, the counsel for the petitioner has handed over copies of the plaints which are taken on record.

3. The senior counsel for the petitioner on enquiry states that while the suit in CM(M) No.567/2017 was instituted on 20th July, 1991, the suit in CM(M) No.566/2017 was instituted on 8th July, 1991.

4. It is the averment of the respondents / plaintiffs in para 15 of the plaint in suit subject matter of CM (M) No.567/2017 that the respondents / plaintiffs therein for the first time on 3rd June, 1988 became aware that the petitioner / defendant / its predecessor had fraudulently returned the shares lodged by the respondent / plaintiff as 'transferees' thereof, for transfer in their name, to the transferor. The position in suit subject matter of CM(M) No.566/2017 is stated to be same.

5. It is the contention of the respondent / plaintiff that the petitioner / defendant / its predecessor as per its Article of Association was bound to return the shares to the transferees even if there was any defect in the transfer deeds and that the petitioner / defendant / its predecessor by so returning the shares to the transferor have caused loss to the respondent / plaintiff.

6. Reliefs of declaration to the said effect and of recovery of damages have been claimed in the suits.

7. The relief of declaration is governed by Part-III of the Schedule to the Limitation Act, 1963 and the Article which appears to be attracted would be Article 58 which provides for a limitation of three years starting from the date when the right to sue first accrues. The right to sue to the respondents / plaintiffs can be said to have accrued on the date when the respondent / plaintiff claim to have become aware for the first time that the shares had been returned by the petitioner / defendant / its predecessor to the transferor.
8. Seen in this light, the suits ought to have been filed within three years of 3rd June, 1988.
9. The respondent / plaintiff in the plaint have stated that the suits were filed after re-opening of the Court after summer breaks.
10. Neither counsel is able to tell, on which date this Court reopened after the summer break of the year 1991.
11. It thus *prima facie* appears that the learned ADJ, erred in not hearing arguments on the issues ordered to be treated as preliminary issues and in posting the matter for evidence.
12. The senior counsel for the respondents / plaintiffs though appears on advance notice but states that a date be given for arguments.
13. Issue notice.
14. Notice is accepted by the counsel for the respondents / plaintiffs.
15. At this stage, the senior counsel for the respondent / plaintiff on instructions states that these petitions be allowed by directing the learned ADJ to instead of proceeding with the evidence of the respondent / plaintiff, hear the counsels on issues earlier ordered to be treated as preliminary and pronounce thereon.

16. The petitions are allowed. Accordingly, the orders of the learned ADJ impugned in these petitions and listing the suits for evidence of the respondents / plaintiffs are set aside and the learned ADJ is requested to in accordance with the earlier orders in the suit hear the counsels on the issues ordered to be treated as preliminary and pronounce thereon.

17. No observation contained herein shall influence the learned ADJ in returning any finding on the preliminary issues as the respondents / plaintiffs have not been heard as yet.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 13, 2017

‘gsr’..