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

\+ C.R.P. 172/2017 & CM No.28182/2017 (for condonation of 33 days delay in re-filing the petition)

SATBIR SINGH SAWHNEY ..... Petitioner

Through: Mr. Karthik K.R. & Mr. Ruchin Midha, Advs.

Versus

PHOENIX ARC PRIVATE LIMITED ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.08.2017**

1. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order [dated 22nd April, 2017 in CS No.56100/2016 of the Court of Additional District Judge-01 (ADJ), New Delhi District, Patiala House Courts, New Delhi] of dismissal of application filed by the petitioner / defendant under Order VII Rule 11 of the CPC.

2. The respondent / plaintiff instituted the suit, from which this petition arises, for recovery of Rs.7,95,152.64 paise, *inter alia* pleading i) that the petitioner / defendant approached the erstwhile The Royal Bank of Scotland N.V. for grant of a personal loan and a loan of Rs.6,67,000/- was granted and the petitioner / defendant entered into the Loan Agreement dated 18th July, 2008 and also executed other relevant documents in favour of The Royal Bank of Scotland N.V.; ii) that the petitioner / defendant undertook to confirm to the repayment schedule of Rs.20,034/- each month for 48 months; iii) that the petitioner / defendant failed to adhere to the financial / fiscal discipline of repayment of loan and also did not respond to the

numerous demands therefor; iii) that The Royal Bank of Scotland N.V., vide a Deed of Assignment dated 30th April, 2012, assigned to Phoenix Trust FY 12-6, the debt and dues payable by the petitioner / defendant and the respondent / plaintiff is the trustee of Phoenix Trust FY 12-6; iv) that the respondent / plaintiff has thus entered into the shoes of The Royal Bank of Scotland N.V. and become solely entitled to receive the amounts payable under the contract from the petitioner / defendant; v) that the respondent / plaintiff got issued a final demand notice dated 29th January, 2014 to the petitioner / defendant; vi) that as on 28th July, 2014, a sum of Rs.7,95,152.64 paise was due from the petitioner / defendant to the respondent / plaintiff.

3. The petitioner / defendant filed the application under Order VII Rule 11 of the CPC for rejection of the plaint on the ground of the claim therein being barred by limitation contending i) that while as per the plaint, the petitioner / defendant was liable to repay the loan vide 48 equated monthly installments starting from 1st August, 2008, the respondent / plaintiff had along with the agreement filed before the Court, attached an installment plan pertaining to some other agreement and not the agreement with the petitioner / defendant; ii) that it is settled law that in case of financial institutions failing to make a demand or take action immediately after one or two defaults in repayment of installments, no fresh cause of action arises due to non-payment of any subsequent installments; reliance was placed on ***State Bank of India, Super Market Branch, Gulbarga Vs. Ravindra*** 1999 SCC OnLine Kar 233 and on certain other judgments; iii) Supreme Court also in ***Khatri Hotels Pvt. Ltd. Vs. Union of India*** (2011) 9 SCC 126 has held that if a suit is based on multiple causes of action, the period of limitation will

begin to run from the date when the right to sue first accrues; iv) that the cause of action accrued to the respondent / plaintiff / its predecessor on 1st September, 2008 and 1st October, 2008 when the petitioner / defendant committed default in payment and the limitation for filing the suit expired on 1st October, 2011 in terms of Article 37 of the Limitation Act, 1963; v) that on the contrary, the suit was filed on 21st August, 2014; and, vi) that mere assignment of the debt by The Royal Bank of Scotland N.V. to the respondent / plaintiff did not give any fresh cause of action to the respondent / plaintiff.

4. The learned ADJ has dismissed the application relying on order dated 24th January, 2014 in CRP No.8/2014 titled ***Virendra Singh Chauhan Vs. Phoenix ARC Private Limited*** and on judgment dated 17th December, 2015 in RFA No.56/2014 titled ***Kotak Mahindra Bank Ltd. Vs. Anuj Kumar Tyagi***, both of this Court and holding that i) according to Article 113 of the Limitation Act, the period of limitation of three years commences from the date on which the last installment was to be paid; and, ii) the right to sue would accrue each time when there is a default in payment of EMI on its due date but the period of limitation would commence from the date of the last defaulted EMI.

5. The counsel for the petitioner has however referred to the judgment dated 29th June, 2016 of the Supreme Court in Civil Appeal No.7245/2008 titled ***Sundaram Finance Ltd. Vs. Noorjahan Beevi***.

6. The aforesaid judgment of the Supreme Court is not in the context of rejection of the plaint under Order VII Rule 11 of the CPC but in the context of dismissal of a suit, after trial, as barred by limitation.

7. Though the petitioner / plaintiff has not filed before this Court the copy of the order framing issues in the suit, in which it was informed that the recording of evidence of the respondent / plaintiff was underway but it can safely be assumed that an issue as to limitation would have been framed.

8. In the case before the Supreme Court in ***Sundaram Finance Ltd.*** supra, the agreement was of 20th September, 1983 and the last date of payment was 20th April, 1984; however, the suit was filed only on 26th May, 1988 i.e. after more than three years from the last date for payment.

9. On the contrary, in the present case, the Loan Agreement is of 18th July, 2008 and the last date for payment was 17th July, 2012 and the suit was filed on 21st August, 2014 i.e. within three years of the last date of payment.

10. Undoubtedly, the Court, on an interpretation of the clauses of the agreement in that case came to the conclusion that the right to sue accrued when the hirer in that case committed default in payment of installment and thus held that the concurrent finding of the Suit Court and of the High Court in appeal, of the suit claim being barred by time, was correct.

11. I am of the view that the question of limitation in the present case also cannot be decided at the stage of Order VII Rule 11 of the CPC and is best left to be decided at the stage of final adjudication of the suit. It is common in banking transactions for the bank to, from time to time, get acknowledgments of liability signed from the borrower and it is felt that the respondent / plaintiff should have a chance to prove in evidence that its claim is within time so as not to prejudice the decision of the issue at the final stage.

12. I am refraining from making any further observations.

13. There is no merit in the petition.

14. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 08, 2017
'gsr'..
(corrected & released on 24th October, 2017)