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

\+ CM(M) 1189/2016 & CM No.43200/2016 (for stay)

MOOLCHAND ..... Petitioner

Through: Mr. V.N. Jha, Adv.

Versus

BALJEET SINGH ..... Respondent

Through: Mr. N.S. Dalal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

<u>O R D E R</u>

% **19.09.2017**

1. This petition under Article 227 of the Constitution of India impugns the order [dated 8th September, 2016 in CS No.173/2015 (New Case No.11661/2016) of the Court of Additonal District Judge-17 (ADJ), Central District, Tis Hazari Courts, Delhi] and seeks summary dismissal of the suit filed by the respondent / plaintiff against the petitioner / defendant as barred by time.

2. The petition was entertained and notice thereof ordered to be issued. The counsel for the respondent/plaintiff appears. The counsels have been heard.

3. The impugned order dated 8th September, 2016 is of withdrawal of the application filed by the respondent / plaintiff for condonation of delay of 157 days in institution of the suit and of framing of issues. Though there can be no grievance of the petitioner / defendant against the respondent / plaintiff withdrawing the application for condonation of delay and framing the issues and with which issues no fault is found but the question to be

considered in the present petition is, whether the suit claim as per averments in the plaint is barred by time because if that is so, the suit ought not to be permitted to consume the time of the Trial Court.

4. The respondent / plaintiff has instituted the suit, from which this petition arises, for recovery of Rs.29.50 lacs from the petitioner / defendant with interest pleading i) that the petitioner / defendant had represented to the respondent / plaintiff that he will sell to the respondent / plaintiff an immovable property and the respondent / plaintiff paid advance / sale consideration of Rs.29.50 lacs to the petitioner / defendant on 17th April, 2012, 1st May, 2012, 2nd May, 2012 and the transaction was to be completed on 15th July, 2012; ii) that the respondent / plaintiff realised of the fraud committed by the petitioner / defendant and on 12th July, 2012 complained to the police and upon the failure of the petitioner / defendant to refund the monies, instituted the suit.

5. Though from the papers on record the date of institution of the suit is not clear but both counsels are *ad idem* that the suit was instituted on 19th November, 2015.

6. Being of the view that the cause of action if any for refund of the sale price paid to the petitioner / defendant accrued to the respondent / plaintiff against the petitioner / defendant latest on 12th July, 2012 when the respondent / plaintiff complained against the petitioner / defendant to the police and / or on 15th July, 2012 being the date for completion of the transaction and that the suit had been filed beyond three years therefrom, I have straightaway enquired from the counsel for the respondent / plaintiff as to how the suit claim is within time.

7. The counsel for the respondent / plaintiff has argued i) that the suit was first instituted on 14th May, 2015 i.e. within three years of 12th July, 2012 in the High court; ii) that at that time there was a confusion, whether the suits of the value of over Rs.20 lacs have to be filed in the High Court or in the District Court; and, iii) that subsequently, on issuance of the administrative order by Hon'ble the Chief Justice, the suit was taken back from the High Court and filed in the District Court.

8. On enquiry, it is stated that the suit, though was filed in the High Court as is evident from the documents filed by the petitioner / defendant also before this Court, but was never listed before any Bench of this Court.

9. I am unable to understand as to what purpose the aforesaid filing would serve inasmuch as the filing of a suit in a wrong Court does not enure to the benefit of the suit ultimately filed in the correct Court. At best, the respondent / plaintiff could have invoked Section 14 of the Limitation Act, 1963 but which has also not been done.

10. The counsel for the respondent / plaintiff has then drawn attention to para no.20(B) of the plaint where the respondent / plaintiff has pleaded that the petitioner / defendant on 3rd April, 2013, in the proceedings for obtaining bail in the FIR lodged by the respondent / plaintiff against the petitioner / defendant, had stated that he will return the entire amount of the case to the respondent / plaintiff in two equal installments in two months time.

11. Though undoubtedly if the order dated 3rd April, 2013 was to be treated as acknowledgment of liability within the meaning of Section 18 of the Limitation Act, then the suit had been instituted within three years

therefrom but neither has respondent / plaintiff in the plaint pleaded the same to be acknowledgment of liability from which the fresh period of limitation will be counted nor has in the cause of action paragraph pleaded the cause of action to have accrued on 3rd April, 2013. Though the counsel for the respondent / plaintiff has argued that since the fact is found in the plaint though not in the cause of action paragraph, the same has to be read but I am unable to agree. Once the law requires the date, on which cause of action for the suit accrued, to be expressly pleaded in a separate paragraph for the reason of computing whether the suit claim is within time, the dates mentioned in the said paragraph only are to be taken into consideration and the plaintiff cannot be permitted to refer to a plea anywhere else hidden in the plaint. If the same were to be permitted, the same would make otiose the law requiring the date on which the cause of action accrued to be expressly pleaded.

12. Of course, it was open to the respondent / plaintiff to amend the plaint but surprisingly the respondent / plaintiff has not done so inspite of the petitioner / defendant having agitated the matter before the Trial Court as well as before this Court also now nearly for one year.

13. The counsel for the respondent / plaintiff offers to pay costs of Rs.50,000/- for allowing the respondent / plaintiff to so carry out amendments in the plaint.

14. Considering that at least as per the pleas of the respondent / plaintiff, the respondent / plaintiff has been defrauded by the petitioner / defendant of nearly Rs.30 lacs, it is deemed appropriate to allow the respondent / plaintiff to so amend the plaint.

15. The petition is disposed of with the direction to the respondent / plaintiff to, within one month of today, file before the suit Court amended plaint in aforesaid terms and subject to paying costs aforesaid of Rs.50,000/- to the counsel for the petitioner / defendant, the amended plaint shall be taken on record and the suit shall be proceeded with further.

16. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 19, 2017

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