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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 230/2017 & CM No.38253/2017 (for stay).
OM PRAKASH THR LRS & ORS Petitioners
Through: Mr. D.V. Khatri, Adv.
versus
BHANWATI @ BHANO & ORS Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **27.10.2017**

CM No.38254/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

C.R.P. 230/2017 & CM No.38253/2017 (for stay).

3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 28th August, 2017 in Case No.12917/16 of the Court of Additional District Judge-03 (West), Tis Hazari Courts, Delhi) of dismissal of the application of the petitioners / defendants no.2&3 under Order VII Rule 11 of the CPC filed at the stage of evidence of the petitioners / defendants no.2&3.

4. Rejection of the plaint was sought on the ground of the suit claim being barred by time.

5. Though the learned Additional District Judge has dismissed the application merely reasoning that an issue qua limitation had been framed, and which alone cannot be a ground for dismissal of an application under Order VII Rule 11 of CPC, but on a reading of the paper book, *prima facie* not finding any case for rejection of the plaint on the ground of limitation to

have been made out and the application to be only dilatory, I have enquired from the counsel for the petitioners / defendants no.2&3 that under which Article of the Schedule to the Limitation Act, 1963 is he computing the period of limitation for the suit.

6. The counsel for the petitioners / defendants no.2&3 is clueless in this regard.

7. However, while this order is being dictated and on being handed over a copy of the Limitation Act, he states that Article 26 of the Schedule to the Limitation Act would apply. He also states that the respondents no.1&2 / plaintiffs have not cited any Article in the plaint.

8. Article 26 referred to provides for limitation, for a suit for recovery of money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them, of three years, commencing from the date when the accounts are stated in writing signed by the defendant or his agent duly authorised in this behalf unless where the debt, by a simultaneous agreement in writing signed as aforesaid, is made payable at a future time.

9. Off the cuff reference to the Article 26 of the Limitation Act is totally misconceived.

10. The suit, from which this petition arises, is for recovery of Rs.1,58,81,762/- claimed to have been withdrawn by the petitioners / defendants no.2&3 from the account of the predecessor of the respondents no.1&2 / plaintiffs with the respondent no.3/defendant No.1 Delhi State Co-operative Bank, by forging and fabricating documents. There is no case of any accounting relationship between the respondents no.1&2 / plaintiffs and

the petitioners / defendants no.2&3.

11. The counsel for the petitioners / defendants no.2&3 on enquiry, states that since the money was drawn from the respondent no.3 Bank, the said Article 26 would apply.

12. I am afraid not.

13. The counsel for the petitioners / defendants no.2&3 then contends that vide the impugned order, another application of the petitioners / defendants no.2&3 under Order VIII Rule1-A(3) of the CPC to file additional documents has also been dismissed.

14. Though the Revision Petition under Section 115 of the CPC would not lie against the said order and further, though the claim sought by the petitioners / defendants no.2&3 in this petition is only for dismissal of the suit by rejection of the plaint and not for taking the said documents on record but to obviate resultant delays from the petitioners / defendants no.2&3 filing a fresh petition challenging that part of the order, the counsel for the petitioners / defendants no.2&3 has been heard on the said aspect also.

15. The counsel for the petitioners / defendants no.2&3 states that it was the plea of the petitioners / defendants no.2&3 in the written statement that the subject monies in the bank account of the deceased in fact belonged to the petitioners / defendants no.2&3, having been received by the petitioners / defendants no.2&3 towards sale of certain lands and deposited in the account of the deceased. It is argued that the petitioners / defendants no.2&3 at the stage of their evidence, wanted to file documents namely Agreement to Sell and receipts executed by the petitioners / defendants no.2&3 for sale

and which have been wrongly refused to be taken on record by the learned Additional District Judge observing that it has nowhere been pleaded by the petitioners / defendants no.2&3 in their written statement that their share out of the sale of joint land was taken by the deceased and deposited by him in his bank account and that it was the own plea of the petitioners / defendants no.2&3 that the land was sold vide *bayana* Agreement dated 20th May, 2007 followed by other documents of the year 2008 and the amount from the bank of the deceased had been transferred to the account of the petitioners / defendants no.2&3 after the death of the deceased for the reason of being nominee of the deceased with respect to the said bank account and that the documents sought to be filed did not support the case of the petitioners / defendants no.2&3 that the sale consideration including their share was deposited in the savings account of the deceased after the same opened on 10th January, 2009.

16. The counsel for the petitioners / defendants no.2&3 on enquiry as to the issues framed in the suit has drawn attention to the page 14 of the paper book where the issues framed in the suit are reproduced as under:-

- “1) Whether the plaintiff has not served notice under Section 129 Delhi Co-operative Societies Act to Defendant no.1, if so, its effect? OPD-1.*
- 2) Whether the suit of the plaintiff is barred by limitation? OPD*
- 3) Whether defendant no.2 and 3 being nominees of deceased Kanwar Lal were alone entitled to receive the suit amount and whether plaintiffs have no claim against defendant no.2 and 2 in respect of suit amount? OPD2 and 3*

- 4) *Whether the plaintiff is entitled to recover suit amount from the defendant? OPP*
- 5) *Whether plaintiff is entitled to interest, if so, at what rate and for what period? OPP*
- 6) *Relief.”*

17. No issue is found to have been framed on the plea aforesaid, even if any in the written statement of the defendant. The purpose of framing of issues is to guide the trial and no evidence beyond issues can be recorded.

18. No merit is thus found in the challenge to the order dismissing the application of the petitioners/defendants No.2&3 for filing additional documents either.

19. The counsel for the petitioners / defendants no.2&3 refers to issue no.3 aforesaid.

20. However the said issue is specific to the aspect of the petitioners / defendants no.2&3 being the nominee of the deceased with respect to the subject account and cannot take within its ambit the plea, even if any aforesaid.

21. The counsel for the petitioners / defendants no.2&3 states that yet another application for filing list of witnesses has been allowed subject to the relevancy of the witnesses being ascertained.

22. No error is found in the said order either.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 27, 2017

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