

THE HON'BLE SRI JUSTICE S.V. BHATT
CIVIL REVISION PETITION No.2532 of 2018

ORDER:

Heard Sri A. Ramakrishna and Sri Jelli Kanakaiah for parties.

The plaintiff in O.S.No.19 of 2005 is the revision petitioner. The suit is filed for specific performance of agreement of sale dated 03.06.1993. The respondents herein are the defendants, and have filed I.A.No.471 of 2005 under Order VII Rule 11(d) of CPC to reject the plaint as barred by limitation. The respondents were successful in persuading the trial court resulting in rejection of plaint in O.S.No.19 of 2005 through the order dated 29.12.2017. Hence, the Civil Revision Petition at the instance of plaintiff.

For the purpose of disposing of the Civil Revision Petition, the averments made in I.A.No.471 of 2005 are referred to.

The respondents-defendants averred that the cause of action for filing the suit as per the averments in the plaint had arisen in the year 1992. The limitation if is reckoned from the date given in the plaint, the suit is hopelessly barred by limitation. According to respondents, Articles 53 and 54 read with Section 3 of Limitation Act are applicable to the case on hand and the plaint is liable for rejection as barred by limitation.

The petitioner-plaintiff replied by contending that the date of suit agreement could not be disclosed because the original suit agreement was with the defendants and the plaintiff requested the defendants to file the same into Court. In the agreement dated 03.06.1993, the respondents herein have adverted to the suit agreement. The plaintiff claims to have issued legal notice dated 16.05.2005 demanding specific performance of suit agreement. The time is not the essence of the contract particularly the conduct of parties. According to revision petitioner, the filing of the suit is within time, whether demand, refusal etc., exist are facts in issue in the case on hand but are not decided on affidavit. Unless and until the parties enter witness box and place the oral and documentary evidence, by merely referring to one side of the case, it could not be concluded that the suit is barred by limitation.

Before proceeding further, it is recorded that the instant application was filed in the year 2005. No reason is forthcoming from the record in the Civil Revision Petition as to why the interlocutory application is kept pending for 12 years. Be that as it may, the order under revision refers to the applicability of Article 54 of Limitation Act and holds that the date of agreement is dated 03.06.1993, balance of sale consideration is agreed to be paid on or before 15.02.1994, then the suit ought to have been filed on or before 15.02.1997. The

pendency of a suit in O.S.No.17 of 2003 is referred to and further held that the defendants in O.S.No.17 of 2003 are proper and necessary parties to O.S.No.19 of 2005. The non-joinder of these necessary and proper parties would cumulatively result in conclusion that the plaint in O.S.No.19 of 2005 attracts Order VII Rule 11 (d) of CPC and accordingly plaint is rejected.

Mr. A. Ramakrishna contends that the order under revision amounts to illegal exercise of jurisdiction by the trial Court which resulted in pre-judicial adjudication of plaintiff's claim for specific performance. The trial Court, at the outset, could not have gone by the starting point as 1992, payment due by 1994 and suit ought to have been filed on or before 15.02.1997. According to him, the case of revision petitioner is that the suit is filed within three years from the date of refusal of performance by the respondents herein. He makes no bones by contending that the Court below for disposing of an old matter particularly for statistical disposal, has taken up the I.A and rejected the plaint. According to him, the cause of action in the plaint is clear and reads thus:

“The cause of action arose on 01.09.1992 when the contract was 03.06.1993 entered and when sale agreement promoted were made by the defendants to perform the contract and when suit notice was issued on 16.05.2005 and when no reply was given. The final cause of action

arose when suit notice was given and when they committed breach of contract. The cause of action arose at Sirsaid Village of Jammikunta Mandal of Karimnagar District.”

read with the counter filed in I.A.No.471 of 2005 would go to show that the proper issues for consideration would be on the execution of suit agreement, whether the time is the essence of suit agreement; whether the revision petitioner is ready and willing to perform his obligation etc. Therefore, rejecting plaint is unsustainable.

Mr. Jelli Kanakaiah relies on the findings recorded by the trial Court and contends that *ex facie* the plaint is presented beyond three years and therefore, rejection of plaint is justified.

I have perused the record and noted the submissions of the counsel appearing for the parties.

The totality of circumstances leading to the rejection of plaint is already adverted to. At the outset, this Court would like to observe that the learned trial Judge ought to have preferred taking up the suit for trial instead of inviting arguments from the parties in I.A.No.471 of 2005 nearly after 12 years from the date of filing of the suit. The order under revision has not considered the explanation viz., how the suit is within the period of 3 years from the date of refusal of performance and secondly these aspects could not also be considered, unless the parties place oral and documentary evidence before the

Court. The reference to impleadment of parties is not correct and the whole approach in the considered view of this Court, as rightly contended by Mr. Ramakrishna, pre-judged the claim of revision petitioner.

For the above reasons, the Civil Revision Petition is allowed and the order under revision is set aside by observing that the jurisdiction under Rule 11(d) of Order VII of CPC is illegally exercised resulting in record of findings which could have been otherwise possible after a full-fledged trial. The contentions put forth with vehemence by Mr. A. Ramakrishna, especially the I.A is ordered for statistical disposal of suits, are referred and this Court has no reason to doubt that observations made under supervisory jurisdiction under Article 227 of Constitution of India are sufficient to correct the approach. The Court below disposes of O.S.No.19 of 2005 as expeditiously as possible, preferably within two months from the date of receipt of copy of this order. No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE S.V. BHATT

31.08.2018

Note: Issue CC in three weeks

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