

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CIVIL REVISION PETITION No.2890 of 2017****ORDER:**

This Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the Order in I.A.No.349 of 2017 in O.SNo.148 of 2016 passed by the Additional Junior Civil Judge, Malkajgiri, R.R. District, whereby the petition filed under Order VII Rule 11(A) CPC for rejection of the plaint was dismissed.

The petitioners/defendants filed an application under Order VII Rule 11(A) CPC, alleging that the suit claim is barred by limitation as the respondent/plaintiff in the earlier suit got knowledge about execution of the document and limitation starts from the date of knowledge to annul or cancel the document under Section 31 of the Specific Relief Act. When the suit claim is barred by limitation under Article 58 of the Limitation Act, the plaint can be rejected at the threshold and prayed to reject the plaint by exercising power under Order VII Rule 11(A) CPC.

The respondent/plaintiff filed Counter denying the allegations made in the petition while contending that the petitioners got issued legal Notice dt. 04.1.2016 to her and the respondent/plaintiff got issued reply notice on 07.01.2016 to the petitioners and as such, the suit is not barred by limitation and the petitioners without contesting the suit filed this petition and that the petitioners have falsely implicated the respondent in a criminal case though she has not played any fraud and though the plaintiff requested the petitioners to receive the market value of the property and to cancel the sale deed, they did not come forward for the same and finally requested this Court to dismiss the petition.

Upon hearing both the counsel, the trial Court dismissed the petition assigning its own reasons.

Aggrieved by the impugned Order, the present revision is filed while reiterating the grounds urged before the trial Court, more particularly about the previous proceedings etc., and requested to set aside the Order passed by the trial Court and reject the plaint under Order VII Rule 11 (A) CPC.

During hearing, learned counsel for the petitioner reiterated one of the grounds that the suit claim itself is barred by limitation and on the ground of limitation, the plaint has to be rejected by exercising power under Clause 'd' of Rule 11 of Order 7 CPC.

Learned Counsel for the respondent/plaintiff supported the Order of the trial Court in all respects.

The only ground urged in the petition before this Court and the trial Court is that the suit claim is barred by limitation as there was registered correspondence between the parties and previous litigation. The ground of limitation is not a question of law, but it is a mixed question of fact and law. An identical question came up before the Division Bench of the Apex Court in *Vaish Aggarwal Panchayat v. Inder Kumar and others*¹, where the Division Bench of the Apex Court on reference to the larger bench held that limitation is not a pure question of law and it is a mixed question of fact and law, without answering the reference, returned the reference on the ground that no such plea was raised. Therefore, based on limitation, which is a mixed question of fact and law, the plaint cannot be rejected.

¹ 2015 SCC 751

In *Madanuri Sri Rama Chandra Murthy v. Syed JalaR*, the Apex Court had an occasion to the rejection of plaint based on limitation and concluded that when the claim in the plaint is barred by limitation and when the Court found that it has no jurisdiction, the Court is bound to reject the plaint, but this principle has no application to the present facts of the case for the reason that the Judgment of the Apex Court with more strength held that the question of limitation is a mixed question of fact and law.

When the suit was filed with long delay and the Apex Court concluded that the language used under Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by law vide Judgment of the Apex Court in *Hardesh Ores Private Limited v. Hede and Company*³, but in the present facts of the case, based on the allegations made in the plaint, the suit claim does appear to be barred by limitation. The averments made in the plaint as a whole have to be find out whether Clause (d) of Rule 11 of Order VII CPC is applicable. It is not permissible to cull out a sentence or a passage and to read it, out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical senses. As observed earlier, in language used in Clause (d) is quite clear, but if any authority is required, one may usefully refer to the judgments of the Apex Court in *Liverpool and London SP and I Association Limited vs M.V.Sea Success I and Anr*⁴ and *Popat and Kotecha Property v State Bank of India Staff Association*⁵.

² 2017 (5) Scale 127

³ (2007) 5 SCC 614

⁴ (2004) 9 SCC 512

⁵ (2005) 7 SCC 510

In the above judgments of the Apex Court, the plaint was rejected on the ground that the suit claim was barred by limitation.

The main endeavour of the learned counsel for the petitioners is to demonstrate as to how the suit claim is barred by limitation, but the statement was made in the plaint does not appear that the suit claim is barred by limitation.

In *Vaish Aggarwal's* case referred above, a three judge bench opined that there was no conflict of opinion and thereafter the matter came back to the Division Bench for adjudication. The Division Bench reproduced what has been stated by the three judge Bench. It is as under:

“ Before the three judge Bench, counsel for both the parties stated as follows:

It is not the case of either side that as an absolute proposition an application under Order 7 and Rule 11 (d) can never be based on the law of limitation. Both sides state that the impugned judgment is based on the facts of this particular case and the question whether or not an application under Order 7 Rule 11 (d) could be based on law of limitation was not raised and has not been dealt with. Both sides further state that the decision in this case will depend upon the facts of this case.

In view of the judgment of the Apex Court referred supra, it is clear that the plaint could not be rejected as barred by limitation without proper pleadings, framing of issue on limitation and taking evidence, for question of limitation is a mixed question of fact and law and on *ex facie* reading of the plaint, it could not be held that the suit was barred by time. If this principle is applied to the present facts of the case, based on the allegations made in the plaint, it is difficult to conclude that suit is barred by limitation to reject the plaint by exercising power under Order VII Rule 11(d) CPC by this Court. The Apex Court considered the judgment of the

larger Bench and concluded that limitation is a mixed question of fact and law, on the ground that the suit claim is barred by limitation, the plaint cannot be rejected. Therefore, by following the principle laid down in *Vaish Aggarwal's* case referred supra, the plaint cannot be rejected on the ground that it is barred by limitation.

Therefore, the trial Court rightly declined to exercise power under Order VII Rule 11 CPC to reject the plaint on the ground of limitation based on the facts and circumstances of the case and such Order does not call any interference of this Court while exercising power under Article 227 of the Constitution of India as the Order under impugned in this revision does not call for any legal infirmity warranting interference of this Court and consequently, it is liable to be dismissed.

Accordingly, this Civil Revision Petition is dismissed confirming the Order dt.19.04.2017 in I.A.No.349 of 2017 in O.S.No.148 of 2016 on the file of the Additional Junior Civil Judge at Malkajgiri, Ranga Reddy District, while granting liberty to the petitioners to raise such question of limitation and on raising the question of limitation in the Written Statement, the trial Court is directed to frame appropriate issue and decide the same at the end of the trial.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 20-11-2018
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Dt. 20-11-2018

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