*　IN THE HIGH COURT OF DELHI AT NEW DELHI

%　Date of decision: 19th July, 2018

\+　RSA 89/2017 & CM No.10607/2017 (for stay)

KULDEEP SINGH ..... **Appellant**
Through: Mr. Arun Kumar, Adv.

Versus

KHAZANCHI PRASAD ..... **Respondent**
Through: Mr. V. Shukla, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree (dated 22nd December, 2016 in RCA No.43/16 of the Court of Additional District Judge -02 (NE)] allowing the First Appeal under Section 96 of the CPC preferred by the respondent/plaintiff against the order [dated 18th April, 2016 in CS No.4477/15 of the Court of Administrative Civil Judge, North East] on an application of the appellant/defendant under Order VII Rule 11 of the CPC rejecting the plaint in the suit filed by the respondent/plaintiff for declaration as null and void and an outcome of fraud and misrepresentation, the irrevocable General Power of Attorney executed by the respondent/plaintiff in favour of the appellant/defendant and registered on 21st June, 2006 and for perpetual and mandatory injunction restraining the appellants/defendant from dealing with the property, and resultantly restoring the suit for disposal in accordance with law.

2. The appellant/defendant sought rejection of the plaint on the ground that the suit had been filed after more than three years of the date when the respondent/plaintiff had knowledge of the exact nature of the documents.

3. The aforesaid application of the appellant/defendant under Order VII Rule 11 of the CPC found favour with the Suit Court which rejected the plaint. However the First Appellate Court has set aside the rejection of plaint by the Suit Court and restored the suit to original position holding that the question of limitation was a mixed question of law and fact and no case for rejection of plaint on the said ground was made out.

4. This appeal came up first before this Court on 17th March, 2017 when, without indicating as to what substantial question of law arises for consideration, notice thereof was ordered to be issued. Vide subsequent order dated 24th March, 2017 the Trial Court record was requisitioned and resultantly, inspite of there being no interim order in this appeal staying the proceedings in the suit, owing to the Trial Court record having been requisitioned, effectively there is a stay of proceedings in the suit.

5. The counsel for the appellant/defendant has been heard to elucidate whether any substantial question of law arises and the Trial Court record requisitioned has been perused.

6. The suit, from which this appeal arises, was instituted on 15th February, 2011. It was *inter alia* the plea of the respondent/plaintiff in

the plaint, (i) that the respondent/plaintiff had on 6th June, 2006 approached his earlier landlord Vishwanath (impleaded as defendant no.2 in the suit and who has not been impleaded as a party to this appeal) for loan and which loan was advanced by the said Vishwanath to the respondent/plaintiff and the respondent/plaintiff had executed loan documents in favour of Vishwanath; (ii) after two days therefrom, Vishwanath approached the respondent/plaintiff and stated that the loan amount was arranged by him from his relative namely the appellant/defendant and thus the loan documents along with one surety for repayment thereof be executed in favour of the appellant/defendant; (iii) that the respondent/plaintiff, believing Vishwanath and appellant/defendant, agreed to mortgage his immovable property with the appellant/defendant; (iv) the respondent/plaintiff, on 21st June, 2006, in *bona fide* belief that he was executing the mortgage documents, went to the office of the Sub Registrar where his signatures were obtained on a number of documents; (v) that the respondent/plaintiff was regularly paying the agreed rate of interest while continuing in possession of mortgaged property; (vi) that in March, 2007, the respondent/plaintiff approached Vishwanath for redeeming the mortgage but the said Vishwanath stated that the mortgage documents were with his Advocate; and, (vii) "ultimately, when the plaintiff was in receipt of summons on or about February 18, 2008, he came to know about the conspiracy hatched up by Vishwanath in connivance with his close relative Kuldeep Singh and he came to know about the fraud played on him and it revealed that under disguise of mortgage deed, they got the papers executed fraudulently, thereby misstating facts and obtained an irrevocable General Power of Attorney relating to the property in question". The respondent/plaintiff, in para 4 of the plaint, also pleaded as under:-

> *"That simultaneously the defendant No.1 had filed eviction petition bearing No.E-144/2007 titled as "Kuldeep Singh Versus Khajanchi Prasad Gupta" U/s.14(1)(a) of Delhi Rent Control Act and thus had sought the eviction of the present plaintiff herein. However, later on the said petition was also withdrawn unconditionally on January 12, 2009 bearing Petition No.121/2008 (New Number)."*

7. The appellant/defendant sought rejection of the plaint, pleading that the summons of Eviction Petition being E-144/2007 aforesaid were served on the respondent/plaintiff on 20th November, 2007. The suit, from which this appeal arises, as aforesaid, was instituted on 15th February, 2011.

8. The contention of the appellant/defendant thus was that the suit for declaration was filed beyond three years from 20th November, 2007.

9. I have enquired from the counsel for the appellant/defendant, the Article of the Schedule to the Limitation Act, 1963 applicable to such a suit.

10. The counsel for the appellant/defendant states that Article 56, providing for a suit for declaration of the forgery of an instrument issued or registered, would apply.

11. The same provides for limitation of three years commencing from the date when the issue or registration becomes known to the plaintiff.

12. I have drawn the attention of the counsel for the plaintiff to Article 58 which provides for a suit to obtain any other declaration and the limitation of three years wherefor commences on the date when the right to sue first accrues.

13. The respondent/plaintiff, in the plaint has not given the date of service of summons of E-144/2007 supra, though has in the plaint admitted the factum of filing thereof and receipt summons thereof. A perusal of the Trial Court file shows on record thereof, certified copies of the orders dated 4th July, 2007 and 1st November, 2007 of the Court of the Additional Rent Controller, Delhi in E-144/2007 demonstrating that i) notice of E-144/2007 was ordered to be issued for the first time on 4th July, 2007, for 1st November, 2007; ii) the noting of the Reader of the Court of the Additional Rent Controller in the margin of the order dated 4th July, 2007 that the process was not issued due to incomplete documents; iii) the order dated 1st November, 2007 also records the same and orders issuance of fresh process for 3rd March, 2008; and, iv) the noting of the Reader in the margin of the order dated 1st November, 2007 is of the process having been issued on 14th November, 2007 and having been served on the respondent/plaintiff on 1st March, 2008.

14. If the limitation of three years were to be counted from 1st March, 2008, the suit filed on 15th February, 2011 was within time.

15. The counsel for the appellant/defendant has however at pages 50-51 of the paper of this appeal filed a certified copy of the summons issued of E-144/2007 for 3rd March, 2008, having the report of the Process Server, of the same having been served on the respondent/plaintiff on 20th November, 2007. A copy of the aforesaid document is also found on the Trial Court record.

16. The counsel for the appellant/defendant states, the suit filed on 15th February, 2011 was beyond three years from 20th November, 2007.

17. The Trial Court record also contains a copy of the Petition for Eviction under Section 14(1)(a) of the Delhi Rent Control Act, 1958, being E-144/2007 filed by the appellant/defendant against the respondent/plaintiff and a perusal whereof does not show any plea of the appellant/defendant, of the General Power of Attorney executed by the respondent/plaintiff in favour of the appellant/defendant.

18. In the aforesaid state of affairs, not only does this Second Appeal not raise any substantial question of law, but even otherwise it will have to be investigated, on which date summons of E-144/2007 were served on the respondent/plaintiff and even if they were so served, whether the summons were accompanied with a copy of General Power of Attorney qua which declaration is sought in the suit, whether from the contents of the petition alone, knowledge can be attributed to the respondent/plaintiff of the exact nature of the document qua which declaration has been claimed in the suit.

19. The said investigation is beyond the domain of Order VII Rule 11 of the CPC.

20. Thus, factually also it is found that it cannot be with certainty said at this stage, as contended by the appellant/defendant, that the plaint in the suit from which this appeal arises is liable to be rejected as barred by time.

21. Dismissed.

No costs.

22. Trial court record be returned forthwith.

RAJIV SAHAI ENDLAW, J

JULY 19, 2018
'pp'..