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

% *Date of Order: 19.12.2018*

+ **C.R.P. No.280/2018**

BRIJESH YADAV Petitioner

Through: Mr. D.V. Khatri, Adv.

Versus

BIJENDER KUMAR KAUSHIKRespondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

CM No. 53470/2018 (for exemption)

1. Allowed, subject to all just exceptions.

C.R.P. No.280/2018 & CM No. 53469/2018

2. The impugned order dated 27.10.2018 passed by the court of learned District & Sessions Judge, North-West District, Rohini Courts, Delhi, ('DJ') in Civil Suit No.244/18 dismissing the application of the petitioner/defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC'), is the subject-matter of challenge in this petition.

3. A civil suit for recovery of Rs.6,80,000/- was filed by the respondent/plaintiff against the petitioner on the ground that he transferred a sum of Rs.5,00,000/- through RTGS in the account of the

petitioner on 16.03.2015. The petitioner filed an application under Order VII Rule 11 of the 'CPC' for the rejection of plaint on the ground that admittedly the cause of action as pleaded in the plaint accrued to the respondent on 16.03.2015 and the suit having been filed on 16.03.2018 is beyond the prescribed period of limitation of 3 years under Article 19 of the Schedule to the Indian Limitation Act, 1963 ('Act') and thus barred in law.

4. After hearing the learned counsel for both the parties, learned DJ by the impugned order dismissed the application observing that '*I have also gone through the Judgments relied upon by the learned Counsel for both the parties. But as there is no bar to the parties entering into the oral agreement, therefore, in my opinion, the question of limitation in the present case is a mixed question of facts and law and can only be decided after parties lead their evidence. The application under Order VII Rule 11 r/w Sec. 151 CPC accordingly stands dismissed.*'

5. The petition is without merit. Sub-section (1) of Section 12 of the Act provides as under: -

“12. Exclusion of time in legal proceedings. –
(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.”

6. Provision of law is amply clear and in computing the period of limitation for any suit/appeal/application, the date from which such

period is to be computed, has to be excluded. The amount was transferred by the respondent in the account of the petitioner on 16.03.2015. This day is to be excluded for the purpose of computing the period of limitation. After excluding 16.03.2015, the suit, having been filed on 16.03.2018, is within three years as per Article 19 of the Schedule to the Act. Hence, the suit filed by the respondent for recovery against the petitioner is well within time.

7. Faced with the situation, learned counsel for the petitioner seeks permission to withdraw the petition.

8. In the circumstances, there is no question of permitting to withdraw the petition as prayed by the learned counsel for the petitioner. The petition along with application, being CM No. 53469/2018, is accordingly dismissed on merits with no order as to costs.

(VINOD GOEL)
JUDGE

DECEMBER 19, 2018
"shailendra"