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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2756 OF 2016
IN
SUIT NO. 3598 OF 1996

Harish Loyalka & Anr	...Plaintiffs
<i>Versus</i>	
Dileep Nevatia & Ors	...Defendants

Ms Neeta Jain, *with Avinash Joshi & Kunal Kripalani, i/b Mulla & Mulla CB & C, for the Plaintiffs.*

Mr Dileep Nevatia, *Defendant No. 1 in Suit & Plaintiff No. 1 in Counter Claim, in person/Applicant.*

Ms Preeti Shah, *for Defendant No. 4.*

Ms Pallavi Bali, *with Anju Singh, i/b Bali Associates, for Defendant No. 5.*

CORAM: G.S. PATEL, J
DATED: 26th February 2019

PC:-

1. The Notice of Motion is under Order VII Rule 11(d) of the Code of Civil Procedure 1908. The 1st Defendant, Mr Dileep Nevatia, who appears in person, seeks that the plaint as a whole be rejected as being barred by limitation.

2. Of immediate relevance is the order dated 22nd September 2000 of FI Rebello J (as he then was) in the Defendants' previous Notice of Motion No. 2816 of 1998. Here Mr Nevatia sought rejection of prayer clause (b)(i) of the plaint as being barred by limitation, and for that purpose also filed a Notice of Motion under Order VII Rule 11(d).

3. It is to my mind wholly irrelevant that the previous Notice of Motion was directed to one prayer clause (b)(i) whereas the present Notice of Motion is less selective in its approach. Rebello J's conclusion and findings on law remain unchanged, as indeed the findings on law have remained unchanged for more than a century; which is to say that the question of limitation is always a mixed question of law and fact. Whether or not the family settlement of 22nd September 1990 was one that the original Plaintiff signed when, as she says, she was in an unsettled state of mind is necessarily a question of fact. She said that she cancelled this settlement or document when she felt better, and did so by a letter dated 15th October 1990. Now this settlement agreement and the cancellation are specifically the subject matter of prayer clause (b) (i). Today when Mr Nevatia addresses what he describes as the 'plaint as a whole', he starts precisely with these paragraphs of the plaint, i.e. paragraphs 12, 13 and onwards which deal with this family agreement of 22nd September 1990 and its subsequent cancellation.

4. There is, therefore, other than the cosmetic difference in wording between the more narrowly focussed Notice of Motion of 1998 and the considerably more broadly worded Notice of Motion of 2016 no significant difference at all. For me to now depart from the

view taken by Rebello J would be not only contrary to law but would also upset established canons of jurisprudence that make his decision a binding precedent. It is not shown, and indeed it cannot be shown, that Rebello J's order was per incuriam or was set aside in appeal.

5. It is not possible to grant Mr Nevatia relief in the present Notice of Motion.

6. With these observations, the Notice of Motion is dismissed. There will be no order as to costs.

7. However, I make it clear that the question of limitation as framed by SK Shah J on 6th July 2006 is still at large and will be heard on merits and on the evidence adduced by the parties at the final hearing of the suit.

(G. S. PATEL, J)