

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 26TH DAY OF NOVEMBER 2019

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

A.No.7259 of 2019
in
C.S.No.293 of 2018

M/s.Indoland Realtors Pvt.Ltd.
By its Managing Director,
Reg.off.43(Old # 113,), First Main Road,
R.K.Nagar, Mandaiveli, Chennai-28. ...Plaintiff

-VS-

1. Mr.S.Salaikumaran,
S/o.Mr.Sudalaimuthu,
11/27, Balaji Nagar Second Street,
Royapettah, Chennai-14.

2. Mrs.Usha,
23/8, Kalaimagam Street,
East Tambaram, Chennai-600 059.

3. Mr.Veeramani,
No.27, Mosque Street,
B2, Gowtham Apartments,
Saidapet, Chennai-600 015. ...Defendants

A.No.7259 of 2019:

1. Mr.S.Salaikumaran,
S/o. Mr.Sudalaimuthu,
11/27, Balaji Nagar Second Street,
Royapettah, Chennai-14. ...Applicant/Defendant No.1

-Vs-

M/s.Indoland Realtors Pvt.Ltd.
By its Managing Director,
Reg.off.43(Old # 113,), First Main Road,
R.K.Nagar, Mandaiveli, Chennai-28.

...Respondent/Plaintiff

2. Mr.Veeramani,
No.27, Mosque Street,
B2, Gowtham Apartments,
Saidapet, Chennai-600 015.

...Respondents/Defendants No.3

This application praying that this Hon'ble court be pleased to reject the plaint in C.S.No.293 of 2018 as time barred as not maintainable due to lack of Jurisdiction as also this case not being a Commercial Dispute.

This application coming on this day before this court for hearing the court made the following order:

This application has been filed under the premise that the suit is barred by limitation on the ground that the entire cause of action relied on the basis of the Surveyor Report dated 21.11.2014.

2. It is the contention of the learned counsel for the plaintiff that the suit ought to have been filed within three years from 21.11.2014, whereas, the suit has been filed in the month of March 2018. Hence, not maintainable.

3. Heard both sides, It is the main contention of the learned counsel for the applicant/defendant that in paragraph nos.11 and 15 of the plaint, the plaintiff has clearly pleaded that they came to know about the alleged misappropriation in the year 2014 itself. Such being the position, the suit ought to have been filed within three years i.e., on or before 20.11.2017, whereas, the suit has been filed in the year March 2018 much beyond the period of limitation.

4. It is the contention of the learned counsel for the plaintiff that when the plaintiff submitted that the plea of limitation is mixed question of facts and law that there are audit reports in the year 2014 which is only an internal audit and exact amount said to have been stiffened could not be detected. Therefore, it is the contention of the plaintiff that when the issue itself is a mixed question of law, the suit cannot be rejected at the stage of threshold.

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5. I have perused the materials. The main contention of the defendant is that the suit is barred by limitation and much emphasis has been made in paragraph nos.11 and 15 of the plaint, whereas, the plaintiff has stated that only by way of audit report, they found out misappropriation whereas, on a careful perusal of the cause of action, it is not the case of the

plaintiff that they came to know about definite amount of alleged misappropriation only on 22.11.2014 whereas, the plaint pleadings proceed despite the fact that misappropriation came out in the audit report and the exact amount could be un-earthed only in internal audit report and subsequent meetings. Such being a position, whether or not, the plaintiff came to the knowledge of the entire misappropriation in the year 2014 alone only during the internal audit is the matter of fact and evidence and those things cannot be decided at this stage.

6. When such disputed facts are the matter of evidence, may be on the premise that some audit report of the year 2014 as referred in the paragraph nos.11 and 15 that cannot be taken as a starting point on limitation to reject the suit at threshold. On perusal of the entire plaint pleadings, I do not countenance the contention of the learned counsel for the defendants to reject the plaint at the stage of threshold. Accordingly, this application filed for rejection of plaint is dismissed.

7. It is the contention of the learned counsel for the plaintiff that the suit is not a commercial suit and would not fall within the ambit of the Commercial Courts Act. I have also perused the entire plaint pleadings with regard to the alleged misappropriation and the recovery of money is

not the basis of any contract for service and the suit is for recovery of money on the alleged misappropriation. Such being the position, the same would not fall within the ambit of the Commercial Courts Act. Accordingly, the Registry is directed to post the suit before the Original Side on 16.12.2019.

Sd/.N.S.K.J.
26.11.2019

//Certified to be a true copy//
Dated this the day of 2020.

S.U./06.10.2020

COURT OFFICER(O.S.)

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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