

**THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO**

**CRP. Nos.5791 and 5826 of 2018**

**COMMON ORDER:**

These two Revisions arise out of a common order and the parties are one and the same, and therefore, they are being disposed of by this common order.

2. The petitioner in both these Revisions is the defendant in O.S. No.1067 of 2017 on the file of the XVII Additional Senior Civil Judge, City Civil Court at Hyderabad.

3. The said suit was filed by the respondent against the petitioner for specific performance of an agreement of sale dt.10.04.1992 executed by the petitioner in favour of the respondent.

4. The petitioner filed I.A. No.85 and 86 of 2018 under Order VII Rule 11 seeking to reject the plaint on the ground that the suit is barred by limitation and on the ground that the plaint did not disclose any cause of action.

5. In these applications it is the contention of the petitioner that there is another agreement dt.02.03.1993, after the execution of the suit agreement dt.10.04.1992, and so, the former agreement cannot be enforced and has become redundant. It is contended in the plaint that the respondent has stated notice had been issued on 25.10.2011 but the same was not filed and if the said notice is filed, it will prove that the suit is hopelessly barred by limitation as it was filed after a period from five years, after issuance of the said notice. It is stated that the respondent has got issued notice

dt.20.08.2015 to make out a cause of action, and the suit therefore has to be dismissed because reply dt.29.08.2015 to the notice dt.20.08.2015 did not give any cause of action for filing the suit.

6. Counter affidavit was filed by the respondent opposing the said applications. It was contended that the plaint cannot be rejected on the basis of the allegations made by the defendant in an application for rejection of the plaint, the Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court. It is contended that there are no specific dates fixed in the agreement dt.10.04.1992 and therefore, the second limb of Article 54 of the Limitation Act, 1963 is applicable, and whether the suit is barred by limitation or not, would be a triable issue; and when there is a triable issue, the plaint cannot be rejected. Other contentions raised by the petitioner were also refuted.

7. By a common order dt.14.08.2018, the Court below dismissed both the applications. After considering the contentions of the parties and the decisions cited before it, the Court below extracted the paragraphs in the plaint dealing with the cause of action and noted that the respondent claimed that the agreement of transfer dt.10.04.1992 had not been denied by the petitioner, that no time was prescribed in the said agreement and the contents of the reply notice dt.29.08.2015 of the petitioner to the legal notice dt.20.08.2015 was pleaded to be the cause of action for filing the suit. It observed that mere non filing of the prior notice dt.25.10.2011 cannot be made a ground to reject the plaint and the petitioner can take advantage of this aspect at an appropriate stage including the aspect of limitation. It observed that the question of limitation is a mixed question of fact and law

and as such, the question whether the second limb of Article 54 of the Limitation Act would apply to the present suit is also a triable issue to be decided during the course of trial in the suit. It also observed that merely because the respondent/plaintiff may not succeed in the suit ultimately, the same cannot be a ground to reject the plaint at the threshold. It also observed that on a meaningful reading of the plaint as a whole, it does not manifestly appear to be vexatious and meritless, in the sense of not disclosing a clear right to sue.

8. Challenging the same, these two Revisions are filed.

9. Counsel for the petitioner sought to contend that the cause of action to file a suit cannot be taken from the date of issuance of reply notice dt.29.08.2015 to the legal notice dt.20.08.2015 and it has to be computed prior notice dt.25.10.2011. The question whether the cause of action arises from 29.08.2015 when the reply notice was issued to the legal notice dt.20.08.2015 is a triable issue, which has to be gone into by the Court below after the evidence is let in by the parties.

10. From a reading of the plaint it cannot be said that manifestly it appears to be vexatious and meritless with an illusion of cause of action. As rightly held by the Court below, the question of limitation is a mixed question of law and fact and the question whether the second limb of Article 54 of the Limitation Act, 1963 would apply to the present suit is also a triable issue and has or to be decided during the course of trial in the suit. The plaint cannot be rejected merely because there is no possibility of the respondent succeeding in the suit.

11. Though the counsel for the petitioner relied on the decision in **Asharaj and Others Vs. S.G.Nagaraj @ Suga Nagaraj**<sup>1</sup> in support of the principle that limitation for filing the suit for specific performance would commence on the date of the receipt of the legal notice from the plaintiff even if there is no reply to the said legal notice, I am unable to subscribe the said view in view of the decision in **Manepalli Udaya Bhaskara Rao Vs. Kanuboyina Dharmaraju**<sup>2</sup> where a Division Bench of this Court held that from the factum of non reply to the legal notice, the Court cannot infer any admission under Section 21 of the Evidence Act, 1872. If there cannot be any inference of admission neither can there be inference of refusal to perform or accept any of the claim in the legal notice.

12. Therefore, I do not find any merit in these Revisions. Accordingly, these Revision Petitions are dismissed at the admission stage. There shall be no order as to costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 18.04.2019.  
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<sup>1</sup> (2014) 4 ILR (Kar) 5778

<sup>2</sup> 2004 (1) ALD 269 (DB)