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

+ **C.R.P. 115/2019**

AJIT KUMAR CHAWLA

..... Petitioner

Through Ms Ananya Bhattacharya, Advocate.

versus

VIJAY KHURANA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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13.08.2019

CM APPL. 22947/2019

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

C.R.P. 115/2019 & CM APPL. 22946/2019

3. The petitioner has filed the present petition impugning an order dated 08.02.2019 passed by the learned ADJ in *Civil Suit No. 593/2017* captioned '*Mr Vijay Khurana v. Mr Ajit Kumar Chawla*'. The respondent has filed the said suit for specific performance and in the alternative, for refund of the amount paid by the respondent and spent on the suit property.
4. By the said order, the Court has rejected the petitioner's application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), which was founded on the petitioner's contention that the said suit is barred by limitation.

5. It is the respondent's case that he is a citizen of Canada and had got in touch with the petitioner as he desired to invest in immovable properties in India. The petitioner owned a property bearing no. A-1/10, First Floor Safdarjung Enclave, New Delhi -110029, admeasuring 490 square yards. It is stated that the same was in a dilapidated condition and the plaintiff (respondent herein) offered to invest in the said property and accordingly paid a sum of ₹47,50,000/- in a number of tranches from June, 2012 till July, 2014. The plaintiff (respondent herein) also claimed that he had spent a sum of ₹25 lakhs to ₹30 lakhs in renovating the said property. According to the plaintiff, the parties had agreed that the said property would be sold to a third party and the property renovated by the plaintiff would be sold for realizing the investments made by the plaintiff.

6. According to the petitioner, the said suit was barred by limitation as the plaintiff (respondent herein) had, in the written statement filed in an earlier suit filed by the petitioner (*Mr Ajit Kumar Chawla v. Mr Vijay Khurana, Civil Suit No. 156/2016*) claimed that he had paid a sum of ₹47,50,000/- and thereafter took over possession of the property in June, 2012. The petitioner claims that since the said suit was not filed within the period of three years from 2012, the present suit is barred by limitation.

7. The plaintiff in its suit had asserted that he had paid an amount of ₹47,50,000/- in various tranches from June, 2012 to July, 2014. He had also set out in the plaint the particulars of the amounts and the dates on which the said amounts had been remitted by banking channels. The Court had considered the aforesaid point and had observed that the suit had been filed in June, 2017 hence it was within the period of three years from the last

payment. The relevant extract of the impugned order is set out below:-

“The suit further does not appear to be barred by limitation from the statements made in the plaint. The plaintiff has specifically stated that he had paid a sum of Rs.47,50,000/- to the defendant from June, 2012 till July, 2014. The suit for specific performance/recovery of money has been filed in June, 2017 i.e. within 3 years from the last payment. Hence, the suit is filed within the prescribed period of limitation as appears from the plaint.”

8. The petitioner claims that the plaint is a piece of clever drafting and is contrary to the submissions made in the written statement filed by the respondent in an earlier suit instituted by the petitioner.

9. It is well settled law that a party must be given full opportunity to explain its pleadings and other proceedings. Clearly, in the circumstances, the suit cannot be dismissed on account a statement made in an earlier proceeding, without the petitioner being afforded an opportunity to explain the same (*See: Nagubai Ammal & Ors. v. B. Shama Rao & Ors.: 1956 SCR 451*).

10. It is also relevant to note that the plaintiff has clearly set out the manner in which the payments had been made. It is also trite law that the question whether a suit is required to be dismissed under Order VII Rule 11 of the CPC is required to be tested on a demurrer. The Court is required to accept the statements made in the plaint in order to consider whether the suit is barred by law or otherwise liable to be rejected under Order VII Rule 11 of CPC.

11. In this view, this Court finds no infirmity with the impugned order. The petition is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

AUGUST 13, 2019/ pkv