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

Date of Decision: 14.08.2019

+ LPA 397/2019

SAGAR INFRA RAIL INTERNATIONAL LTD & ORS...Appellants

Through: Mr. Tarun Chandiok, Adv. with
Ms.Geetha, Adv.

versus

PERFECT SYNERGY ADVISORY PVT LTD Respondent

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

1. This Letters Patent Appeal has been preferred by the original defendants in CS (OS) 614/2016. An application being Crl. M.A. 8483/2019 was preferred by the appellants (original defendants) under Section 340 of the Code of Criminal Procedure, 1973 (Cr.P.C.), which has been dismissed by the learned Single Judge *vide* order dated 23rd April, 2019 (Annexure A-1 to the memo of this LPA). Hence, the original defendants have preferred the present Letters Patent Appeal.

2. We have heard the counsel appearing for the appellants (original defendants) in CS(OS) 614/2016. It appears from the facts of the case that the respondent (original plaintiff) has instituted CS (OS) 614/2016 for recovery of an amount of Rs.6,22,56,850/- with interest. This amount was

claimed by the original plaintiff as the loan amount advanced to this appellants under a loan agreement. Such agreement is dated 19th May, 2011 as submitted by the counsel for the appellants (original defendants).

3. It further appears from the facts of the case that in CS(OS) 614/2016, Issues are yet to be framed. One more application has been preferred by the appellants (original defendants) under Order VII Rule 11 CPC before the learned Single Judge, raising an issue of limitation. Arguments are heard and judgment is reserved in this application before the learned Single Judge.

4. It further appears from the facts of the case, that the appellants (original defendants) have preferred one more application under Section 340 Cr.P.C. raising an issue about the fact that the cheque was issued when the loan agreement was executed i.e. in the year 2011 whereas the original plaintiff's contention is that the loan agreement was of the year 2011 and the cheque was issued subsequently. It appears that plaintiff wants to claim that the suit filed is within the period of limitation whereas the defendants' contention appears to be that the loan agreement document was of the year 2011 and the cheque was also issued in the year 2011 and hence the suit is time barred. It is also submitted by the counsel for the appellants (original defendants) that the cheques were handed over in the year 2011 and they were dated nil.

5. Thus, it appears that respondent (original plaintiff) is asserting that the suit is not time barred whereas it is the contention of the appellants (original defendants) right from the written statement onwards in the suit that the plaintiff's suit is time barred.

6. Looking into the application under Section 340 Cr.P.C. and looking

into the order passed by the learned Single Judge dated 23rd April, 2019 in Crl. M.A. 8483 of 2019 in CS(OS) 614/2016, we find no reason to entertain this Letters Patent Appeal mainly for the following reasons:

- (a) CS(OS) 614/2016 is pending before the learned Single Judge and issues are yet to be framed.
- (b) Looking into the written statement filed by this appellants (original defendants), arguments have already been canvassed by the appellants about the limitation and therefore there can be no issue of limitation which has to be framed by the learned Single Judge in the original Suit.
- (c) One more application has been preferred by the appellants (original defendants) under Order VII Rule 11 CPC which is also about the limitation. This application has already been argued at length and the judgement has been reserved by the learned Single Judge in the original suit.
- (d) One more application under Section 340 of the Cr.P.C. raising the same issue of limitation in different terminology to the effect that loan agreement was entered into between the parties to the suit in the year 2011 and as per page 105 to be read with 108 of this LPA, the cheque was issued in the year 2011 but it was dated nil. Thus, it appears that what is pointed out in the written statement, is slightly narrated in different fashion in the application under Order VII Rule 11 CPC and the same issue is raised once again in the application under Section 340 of the Cr.P.C. in a slightly different manner.
- (e) Thus, no error has been committed by the learned Single Judge while dismissing an application under Section 340 of the Code

of Criminal Procedure – CrI.M.A. 8483/2019 in CS(OS) 614/2016. We are in full agreement with the reasons given by the learned Single Judge in the order dated 23rd April, 2019 passed in CrI.M.A. 8483/2019 in CS(OS) 614/2016.

It has been held by the Hon'ble Supreme Court in **Rugmini Ammal by LRs vs V. Narayana Reddiar & Others** reported in (2007) 12 SCC 611 particularly in para 8 as under:

“8. Coming to the question about the applicability of Section 340 to the facts of the case it was held that stage for initiation of the proceeding, if any, under Section 340 CrPC had not come. Reference was made to a decision of this Court in Sachida Nand Singh v. State of Bihar. Therefore, it was held that initiation of the proceeding under Section 340 CrPC was without jurisdiction. The writ appeal was accordingly allowed.”

(Emphasis supplied)

In view of the aforesaid decision an application under Section 340 of the Cr.P.C. is not maintainable where the issues are yet to be framed and an application under Order VII Rule 11 CPC raising an issue of limitation is already argued out and the judgment is reserved by the learned Single Judge in CS(OS) 614/2016.

It has also been held by the Division Bench of this Court in ***Mr. Vishal Kapoor vs. Mrs. Sonal Kapoor 2014 SCC Del online 4484*** particularly in para 8 as under:

“8. The matter is however put beyond any pale of controversy in Rugmini Ammal by LR's Vs. V. Narayana Reddiar (2007) 12 SCC 611, which remained to be noticed in Punjab Tractors Ltd.

(supra). The Supreme Court in the said judgment held, “normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the Court and this is done at the stage when the proceeding is concluded and the final judgment is rendered”. It was also held that as per language of Section 340 of the Cr.P.C., the Court is not bound to make a complaint as the Section is conditioned by the words “Court is of the opinion that it is expedient in the interests of justice”. The said words were held to show that such a course would be adopted only if the interest of justice requires and not in every case. It was further held that this expediency would normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact such commission of offence has upon administration of justice. It was further held that even where the forged document or forgery may cause a very serious or substantial injury to a person but where such document is just a piece of evidence, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice is minimal, the Court may not consider it expedient in the interest of justice to make a complaint.”

(Emphasis supplied)

In view of the aforesaid decision also, no error has been committed by the learned Single Judge in deciding Crl. M.A. 8483/2019 in CS(OS) 614/2016 *vide* judgment and order dated 23rd April, 2019.

7. In view of the aforesaid facts, reasons and judicial pronouncements, we find no reason to entertain this Letters Patent Appeal as no error has been committed by the learned Single Judge in deciding Crl. M.A. 8483/2019 in

CS(OS) 614/2016 *vide* judgment and order dated 23rd April, 2019. Hence, this appeal is hereby dismissed.

8. The aforesaid observation will not preclude these appellants (original defendants) to file an application under Section 340 Cr.P.C. at an appropriate stage of the suit.

CM APPL. 27570/2019 (*Stay*)

9. In view of the order passed in LPA 397/2019, this application stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 14, 2019

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