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

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Judgment delivered on: 23.08.2019

+ C.R.P. 189/2019

PARMOD CHUNI

..... Petitioner

versus

M/S EXCEL PACK PVT. LTD.

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Uday Bedi with Mr. Jaitegan Singh, Advocates.

For the Respondent : None.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.37774/2019 (exemption)

Exemption is allowed subject to all just exceptions.

C.R.P. 189/2019 & CM APPL.37772/2019 (stay), CM APPL.37773/2019 (for condonation of delay)

1. Petitioner impugns order dated 03.04.2019, whereby, the application of the petitioner under Order VII Rule 11 CPC seeking rejection of the plaint has been dismissed on the ground that the question of limitation is a mixed question of facts and law and as such the plaint cannot be rejected at the threshold.

2. Petitioner was an employee of the respondent and admittedly had taken an advance. As per the Complaint filed by the respondent, said amount was to be repaid in instalments of Rs.10,000/- each.

3. In paragraph 7 of the complaint, it is stated that out of the amount of Rs.3 lakhs, which was advanced, Rs.40,000/- was recovered from the petitioner in four equal monthly instalments of Rs.10,000/- from July 2012 to October 2012. The balance amount of Rs.2,60,000/- was to be paid back in 26 instalments of Rs.10,000/- each ending in June 2014.

4. The Suit has been filed in October 2016 within a period of three years from the date when the last instalment was alleged to be payable.

5. Learned counsel for the petitioner submits that paragraph 8 contradicts paragraph 7 of the complaint. He submits that in paragraph 8 it is stated that petitioner left his job on 23.10.2012 and at that time assured that the entire amount would be paid back in one go by November-December 2012.

6. Learned counsel for the petitioner submits that there was no agreement for repayment of the amount in instalments and even otherwise if it is assumed to be there, the statement made in paragraph 8 negates paragraph 7.

7. Paragraph 7 of the complaint suggests that there was an advance

given to the petitioner, which remained unpaid when he left his job. As per paragraph 7, the petitioner repaid part of the amount in instalments of Rs.10,000/- each. Further averment is that the balance amount was to be paid in 26 instalments ending in June 2014. If these averments are to be taken as correct then the Suit is clearly within limitation.

8. The statement of the learned counsel for the petitioner that paragraph 8 negates paragraph 7 as there is a reference to a handwritten note of the petitioner stating that the amount would be paid back by November-December is a disputed question of fact, which would require evidence to be led by both the parties.

9. The Trial Court, in my view, has correctly held that the plea of the petitioner with regard to the limitation, in the facts of the present case, is a mixed question of facts and law and as such, the plaint cannot be rejected at the threshold and the parties have to be given an opportunity to lead evidence. By the impugned order, the Trial Court has permitted the petitioner to take his defence on limitation in the written statement and has held that the same would be decided at the stage of final hearing.

10. For deciding an application under Order 7 Rule 11, the plaint has to be read with a demur. The plea as to whether there was any agreement to repay the amount in instalments and if so was it novated by a subsequent agreements are disputed questions of fact requiring

trial.

11. I find no infirmity in the view taken by the Trial Court in the impugned order dated 03.04.2019. There is no merit in the petition.

12. Petition is, accordingly, dismissed.

AUGUST 23, 2019
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SANJEEV SACHDEVA, J

