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

+ **CM(M) 83/2020 & CM APPLs. 3035/2020, 3036/2020**

SUBHASH

..... Petitioner

Through: Mr. Vedit Gupta & Mr. Trivesh
Sharma, Advocates (M-9910995511)

versus

PARVEEN GAUTAM

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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27.01.2020

The present petition challenges the impugned order dated 19th September, 2019 by which the application under Order VII Rule 11 CPC of the Petitioner/Defendant (*hereinafter*, “*Defendant*”) has been dismissed by the Trial Court. The suit is one for specific performance of agreement dated 21st January, 2013. The contention of Mr. Gupta, ld. counsel appearing for the Defendant is that the last date for making payment was 21st April, 2013. The suit was filed on 3rd May, 2016 and hence the same was barred by limitation. Thus, the application was wrongly dismissed by the Trial Court.

A perusal of the impugned order shows that the Trial Court has held that the suit cannot be rejected at this stage. It is clear that the issue of limitation would be mixed question of fact and law. In any event, a perusal of the cause of action paragraph in the suit shows that certain events are alleged to have transpired after 21st April, 2013. Oral evidence would be required to be led in respect thereof.

Accordingly, it is directed that the issue of limitation shall be framed as one of the issues in the suit, and would be adjudicated after the trial is concluded. At this stage, Mr. Gupta, ld. counsel submits that the Defendant has not filed the written statement and was awaiting the disposal of Order VII Rule 11 CPC application. The extension of time for written statement is not the subject matter of this petition. It is made clear that the request, if any, shall be made before the Trial Court and the same shall be considered in accordance with law.

With these observations, the petition and all pending applications are disposed of.

PRATHIBA M. SINGH, J.

JANUARY 27, 2020

Rahul