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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA 130/2020, CM APPL.Nos.6969-71/2020
RAMJI LAL

..... Appellant
Through: Mr.Harsh Kumar, Mr.Aditya
Awasthi, Mr.Aditya Raj, Mr.Aditya
Kumar, Advocates.

versus

M/S RUDRA SEVEN BUILDCON PVT LTD & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **24.02.2020**

1. This appeal is against the impugned judgment dated 08.01.2020 wherein the suit for recovery of Rs.3,20,000/- filed by the appellant/plaintiff was dismissed.
2. The brief facts are: The plaintiff had filed a suit on 22.11.2018 under Order XXXVII CPC seeking recovery of Rs.3,20,000/- with pendent lite and future interest on the ground the defendants no.1 and 2, being corporate entities with defendants no.3 and 4 had launched a project by the name of Satyam City at Village, Sidani, Tehsil Mojamabad, NH-8, Ajmer Road, Jaipur, Rajasthan. On 06.10.2011 the appellant purchased three plots for an amount of Rs.7,51,608/- and paid an amount of Rs.7,20,000/- under the agreement. The defendant/respondents failed to comply with the terms of the agreement and the possession of the plots was never delivered to the appellant, hence on 30.01.2012 the defendants no.3 and 4 on behalf of defendants no.1 and 2 issued a cheque bearing no.701157 of Axis

Bank, Greater Kailash for an amount of Rs.7,20,000/-favouring the appellant towards return of the earnest money. However the payment of the said cheque was stopped by the respondents/defendants on 06.02.2012. Again at their request, the cheque was represented on 18.06.2012 but yet again it was dishonoured on the same date. A legal notice dated 02.07.2012 was issued to the respondents but to no avail, hence the appellant filed CC No.4511/5/12 under Section 138 of Negotiable Instruments Act against the respondents herein which was ultimately dismissed vide order dated 12.04.2018. It was thereafter this suit for recovery was filed by the appellant.

3. The learned counsel for the appellant argued the suit was within time per Section 14 and 18 of the Limitation Act.

4. Section 14 is as under:

“14 Exclusion of time of proceeding bona fide in court without jurisdiction. —

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the

jurisdiction of the court or other cause of a like nature.

Explanation.— For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

Section 18 of the Limitation Act, is as under:

“18. Effect of acknowledgment in writing.—

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.”

4. It is argued by the learned counsel for the appellant, the respondent had filed an application under Section 145(2) of the Negotiable Instruments Act wherein he had made a *written acknowledgment* of his liability to an extent of Rs.3,20,000/-. The relevant portion of his acknowledgment is as under:

“2. That the demand notice dated 02/07/2012 sent by complainant is not legally valid as such complaint of the complainant is liable to be dismissed. It is submitted that the accused has already paid Rs. 4, 00, 000/- (Rupees Four Lacs Only)' to the complainant on 01/05/2012 by NEFT-AXIS112122025964 as part payment against the amount of RS. 7,20, 000/- (Rupees Seven Lacs & Twenty Thousand Only) . Therefore at the time of issuing the aforesaid demand, notice dated 02/07/2012 the liability on the accused was only to pay Rs. 3,20,000/- (Rupees Three Lacs & Twenty Thousand Only), whereas the complainant demanded Rs. 7, 20, 000/- through the aforesaid notice from the accused as such demand notice of the complainant is, not valid under eyes of law and on this ground alone, the complaint of complainant is liable to be dismissed. Copy of the statement of accused issued by Axis Bank is enclosed herewith for the kind perusal

of this Hon'ble Court."

5. Further on 13.11.2014 the statement of the respondent no.3, under Section 313 Cr.P.C. was also recorded wherein he again admitted his liability to the extent of Rs.3,20,000/-.

6. Even if this contention of the appellant is to be believed then also the limitation to file this suit would have expired on 12.11.2016 but admittedly this suit has been filed on 23.11.2018. Even otherwise, the learned Trial Court has dealt with the limitation aspect in its impugned judgment as under:

"10. The argument that the limitation to file the suit would commence on 12.04.2018 i.e. the date of the judgment in the case under Section 138 N.I. Act is absolutely meritless. The defendants were not the author of the judgment dated 12.04.2018. It was not within the domain or control of the defendants to pass the judgment dated 12.04.2018. The defendant(s) were only an accused before the court in the case under Section 138 N.I. Act. Given this, it is difficult to comprehend as to how an act of the court in passing the judgment on 12.04.2018 can give a cause of action to the plaintiff to file the present suit against the defendant(s).

11. The argument based on Section 18 of Limitation Act is also misconceived. For Section 18 of Limitation Act, it is essential that the acknowledgment in writing must be of the defendant or of any person through whom defendant derives his title or liability. The judgment dated 12.04.2018 cannot by any stretch of imagination be constrained to be an acknowledgment of the defendant(s). It is not the defendant(s) who had penned the judgment dated 12.04.2018. It is not the defendant(s) who had signed the judgment dated 12.04.2018. Further, the defendant(s) did not claim any title or liability through the court which passed the judgment on 12.04.2018. There is one more reason to it. Even if for the sake of arguments, it be taken that judgment of 12.04.2018 was an acknowledgment of the defendant(s) for the purpose of Section 18 of Limitation Act, yet such an acknowledgment has to be before the expiration of the prescribed period of limitation. Such is not the case here. The cheque is of year 2012. It was dishonoured in the year 2012. The judgment was rendered after nearly six years in year 2018. Thus, the judgment dated 12.04.2018 was not rendered before the expiration of the prescribed period for the suit. Thus, the

argument based on Section 18 of Limitation Act is meritless.

12. The statement under Section 313 Cr.P.C. of Rasam Kumar was given on 13.11.2013. This again does not help the plaintiff for the reason that he filed the suit more than five years later on 22.11.2018. Had he filed the suit within three years of the statement under Section 313 Cr.P.C., the things may have been different.

13. Plaintiff was cross-examined as CWI in the case under Section 138 N.I. Act on 07.09.2013, wherein, the aforesaid suggestion was given to him. This again does not help the plaintiff for the reason that he filed the suit more than five years later, on 22.11.2018. Had he filed the suit within the next three years of the cross-examination dated 07.09.2013, then perhaps the plaintiff could have had an arguable case. That apart, I do not see the cross-examination dated 07.09.2013 of the plaintiff as an acknowledgment for the purpose of Section 18 of Limitation Act. As already stated hereinabove, the acknowledgment in writing under section 18 of Limitation Act has to be of the defendant or of any other person through whom the defendant derives his title / liability. The cross-examination dated 07.09.2013 is not signed by the defendant(s). It is actually a statement of the plaintiff himself, signed by none other than the plaintiff himself. It does not at all bear the signature of the defendant(s). That apart, the cross examination is actually oral evidence of witness reduced to writing by the court or on the dictation of the court. Therefore, it falls in the realm of oral evidence and not documentary evidence. Given the fact that the cross examination of the plaintiff recorded on 07.09.2013 was actually an oral evidence, it cannot, in any event, be said to be an acknowledgment in writing of the defendant(s).

14. The other argument about Section 14 of Limitation Act is also without substance. Section 14 of Limitation Act requires that for computing the period of limitation for any suit, the time during which the plaintiff had been prosecuting another civil proceedings with due diligence shall be excluded, provided the civil proceedings relate to the same matter in issue and is prosecuted in good faith in a court which from defect of jurisdiction or other cause of a like nature is unable to entertain it. The criminal complaint under Section 138 N.I. Act was not civil proceedings. Further, it cannot be said that the criminal court dealing with the complaint case under Section 138 N.I. Act did not have jurisdiction to entertain the same. It also cannot be said that for other cause of like nature there was a defect of jurisdiction in the criminal court. This argument based on Section 14 of Limitation Act is perfunctory at best.”

7. The contention of the appellant per Section 14 and Section 18

of the Limitation Act has been rightly rejected by the learned Trial Court and its order does not need any interference.

8. The learned counsel for the appellant now says the plaint ought to have been rejected under Order VII Rule 11(d) of CPC, hence accordingly, the impugned judgment stands modified to this extent only.

9. The appeal and application(s) stand disposed of.

10. No order as to costs.

YOGESH KHANNA, J.

FEBRUARY 24, 2020

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