In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

C.O. No. 1009 of 2021

Venkatesh Foundation Pvt. Ltd.
Vs.
Jalan Carbons and Chemicals Pvt. Ltd. and others

For the petitioner	:	Mr. Aniruddha Chatterjee, Mr. Rahul Karmakar, Mr. Soumabho Ghose, Mr. Pushan Kar, Mr. Sagnik Majumdar, Ms. Dikshita Chomal
For the opposite parties	:	Mr. Arindam Banerjee, Mr. Suddhasatva Banerjee, Ms. Arpita Saha, Ms. Rituparna Chatterjee, Mr. Amit Mukherjee
Hearing concluded on	:	02.08.2021
Judgment on	:	09.08.2021

Sabyasachi Bhattacharyya, J:-

1. The opposite party no. 1 instituted Title Suit No. 5426 of 2016 against the petitioner (defendant no. 1) and opposite party nos. 2 to 6, the other defendants, for specific performance directing the sixth defendant to execute a lease deed in respect of 5th and 6th floor of the Lake Mall situated at Premises No. 104, Ras Bihari Avenue, Kolkata-

700 029, in terms of and in accordance with the purported agreement between the parties, and for ancillary reliefs.

2. The first defendant/petitioner took out an application for rejection of the plaint of the said suit under Order VII Rule 11 of the Code of Civil Procedure. Such application having been dismissed by the impugned order, the present revisional application has been preferred.

3. Learned counsel for the petitioner argues that the plaint is *ex facie* barred by limitation in terms of Article 54, read with Section 3 of the Limitation Act, 1963. It is argued that the plaintiff itself alleged that, pursuant to the purported agreement, the petitioner had paid certain amounts of money during the years 2006 and 2007. However, as per the plaint allegations, the petitioner did not take any steps to execute any lease deed in terms of the purported agreement. Only on August 14, 2013, the Chief Minister of West Bengal inaugurated the Lake Mall, with regard to which the agreement was entered into. It is mentioned in the plaint that the plaintiff had, by numerous representations, including those made in the years 2011, 2012 and 2013, called upon the defendant no. 1 to have the process of grant of lease and delivery of possession to the plaintiff expedited. By placing reliance on electronic mails and letters, starting from September 7, 2012 onwards till January 15, 2016, learned counsel alleges that the plaintiff merely sought to prolong the starting point of limitation, whereas the limitation had started to run when the petitioner failed to execute, even as per the plaint case, the lease deed-in-question after

April 20, 2007 when the last tranche of payment was made by the plaintiff/opposite party no. 1.

4. At best, it is argued, the cause of action for the suit for specific performance arose in the year 2011, when the first representation was given as per the allegations at page 11 of the plaint, by the plaintiff. However, the suit was filed only in the year 2016 and is palpably barred by limitation.

5. Learned counsel appearing for the plaintiff/opposite party no. 1, on the other hand, contends that, in part performance of the agreement, the plaintiff had made over the aggregate sum of Rs. 1.21 crore in four instalments, the last being on April 20, 2007. It has specifically been alleged that the Lake Mall was inaugurated on August 14, 2013. Prior to and after such inauguration, the plaintiff had given representations to the opposite party no. 1.

6. The defendant no. 1/petitioner, as per the plaint case, never refused to perform its part of the agreement. Rather, in paragraph no. 12, the plaintiff/opposite party no. 1 specifically pleaded that, in spite of receipt of the said written requests, the defendant no. 1 did not respond thereto in writing and, upon enquiries, the functionaries of the defendant no. 1/petitioner orally held out that there were certain formalities underway between the defendant no. 6, that is, the Kolkata Municipal Corporation and the defendant no. 1 relating to the Lake Mall Project, which formalities were likely to be completed within a reasonable time. It was further pleaded in paragraph no. 12 of the plaint that, immediately upon completion of such formalities, the defendant assured that it would arrange for expeditious grant of lease of the suit premises by the defendant no. 6 to the plaintiff/opposite party no. 1. The plaintiff believed such representation to be true and correct in view of the defendant no. 1 being a reputed group of entrepreneurs in West Bengal.

7. In continuation, the opposite party no. 1 pleaded in paragraph no. 13 of the plaint that the men and agents of defendant no. 1/petitioner held out that, since the aforementioned formalities of defendant no. 6 was completed, the petitioner would get in touch with the plaintiff via electronic mail and have the said transaction finalised.

8. Thereafter, only in the third week of May, 2016, the plaintiff learnt for the first time that a hoarding/advertisement displayed on the external wall of the suit property, convened the name of defendant no. 5. Thereafter, as per paragraph no. 14 of the plaint, the plaintiff made necessary enquiries and came to know that defendant nos. 1 and 2 were purporting to enable the defendant no. 5 to open a multiplex at the suit property and was in the process of closing negotiations for making over possession of the suit premises to the defendant no. 5 to start infrastructural work relating thereto.

9. Hence, as per the averment made in paragraph no. 30 of the plaint, the cause of action of the instant suit arose only in the third week of May, 2016, when the advertisement, indicating the implied refusal of the defendant no.1/petitioner to honour the agreement entered into between the parties, was first noticed by the plaintiff.

10. In reply, the petitioner reiterates the arguments initially advanced and further submits that the suit was not maintainable in the absence of a specific written agreement. As per the provisions of the Stamp Act, and the Registration Act, such agreements as alleged by the plaintiff are to be stamped duly and registered, for the court to take cognizance of such documents. Hence, in the absence of any written agreement, it cannot be said that there was a concluded contract between the parties, which was valid in the eye of law.

11. Upon hearing learned counsel for the parties, this Court is of the opinion that the provisions of neither the Transfer of Property Act nor the Indian Stamp Act and/or the Registration Act provide anywhere that all agreements have to be compulsorily stamped and/or registered. Only in cases where there is existence of a written agreement above a certain denomination, such document is required to be registered and stamped. However, the law nowhere provides that an oral agreement cannot be entered into and/or enforced by way of a suit for specific performance.

12. In the present case, the argument of the petitioner, that the alleged oral agreement between the parties was invalid in the eye of law merely since the same was not reduced to writing and/or adequately stamped/registered, is not tenable in the eye of law. There is no mandate cast by any statute that all documents have to be reduced to writing. There is ample scope, at least on the face of the plaint, subject to proof in the suit, to assume *prima facie* that an oral agreement was entered into between the parties and is legally enforceable.

13. As far as the question of limitation is concerned, Article 54 of the Limitation Act categorically provides that the starting point of limitation for a suit for specific performance of a contract is the date fixed for the performance, or, if no such date is fixed, when the plaintiff has noticed that performance is refused.

14. It is well-settled that the sole consideration of the court while deciding an application under Order VII Rule 11 (d) of the Code of Civil Procedure is, whether on a plain reading of the plaint and the documents annexed or referred thereto, the suit is barred by any law.

15. In the present case, on a plain reading of the plaint, it is crystal-clear that the plaintiff has categorically made out a case that it had to wait till inauguration on August 14, 2013 and became first aware of the refusal by the defendant no. 1 to honour the agreement between the parties when the plaintiff came across a hoarding/advertisement displayed on the external wall of the suit property in the third week of May, 2016, announcing the name of the defendant no. 5.

16. As such, the suit, on a plain and meaningful reading of the plaint, was filed well within the period of limitation which, in the present case, would be three years from the date on which the plaintiff allegedly had first noticed that the performance of the purported oral agreement was refused by the defendants.

17. For the purpose of deciding a demurrer application, the court has to take the pleadings of the plaint to be sacrosanct. If such an approach is adopted in the present case, it cannot be said that the suit was *ex facie* barred by limitation.

18. The cited judgment does not help the petitioner's cause, since the same was rendered in the context of the Arbitration and Conciliation Act, 1996, in particular, Section 11 of the same. The question which fell for consideration before the Supreme Court was the scope of the court taking up an application under Section 11 of the Arbitration and Conciliation Act, 1996, to go into the enquiry as to whether the arbitration clause is valid and whether the agreement containing such clause, if compulsorily stampable, was duly stamped or not.

19. The said ratio does not have any application to the present case, since there cannot arise any question of payment of any stamp duty being a pre-condition of the court taking cognizance of the alleged agreement, since the agreement was not in writing but allegedly entered orally, as gathered from other circumstances, including the conduct of the parties.

20. Hence, the trial court acted well within its jurisdiction in rejecting the application of the defendant no.1/petitioner under Order VII Rule 11 of the Code of Civil Procedure.

21. Accordingly, C.O. No. 1009 of 2021 is dismissed, affirming the order impugned therein, dismissing the application of the revisionist petitioner for rejection of the plaint of Title Suit No. 52 of 2019.

22. There will be no order as to costs.

23. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

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On the prayer of learned counsel for the petitioner, all issues raised in the suit are kept open for being decided on merits at the final hearing of the suit.

It is made clear that the observations made herein shall not influence the trial court in any manner while deciding the suit.

Let this order be deemed to be a part of the judgment delivered earlier today.

(Sabyasachi Bhattacharyya, J.)