

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.97 OF 2013

1. M/s Cross Country Hotels Ltd.,
i. Khasra 19, Bikanerm, Jaipur Road,
Village Himmatsar, Bikaner.

ii. 25/1, Furniture Block, Kirti Nagar,
New Delhi – 110015.

2. Kusuma Juneja,
wife of late Shri. Vijay Kumar Juneja,
major of age,
resident of F 6/8, Vasant Vihar,
New Delhi – 110 057.

... Appellants.

Versus

1. Shri Bhupinder Kumar Malhotra,
Son of Shri H.L. Malhotra,
major in age,
E/8, East Patel Nagar,
New Delhi.

2. Ms. Suman Gambhir,
Daughter of Shri K.D. Gambhir,
major in age,
63, Deshbandhu Apartments,
Kalkaji, New Delhi – 110019.

3. Shri Gurcharan Singh,
major in age,
C-2,/126, Ashok Vihar-II,
New Delhi.

4. M/s Orion Hotels,
Company under Companies Act,
C-2/126, Ashok Vihar-II,
New Delhi.

5. M/s Cargo Construction Company Pvt. Ltd.,
1/9b, Jindal House, Asaf Ali Road,
Company under Companies Act,
New Delhi – 100001.

6. Shri Jyant Nand,
major in age,
Son of Late Shri Y.P. Nanda,
10, Ring Road, Lajpat Nagar-IV,
New Delhi – 110024.

7. Oriental Bank of Commerce,
Subzi Mandi Branch,
Delhi.

... Respondents.

Mr. A. Sardesai, Advocate for the Appellants.

**Coram: M.S. SONAK &
SMT. BHARATI H. DANGRE, JJ.**

Date: 9th March 2021

ORAL JUDGMENT: (PER M.S. SONAK, J)

Heard Mr. A. Sardesai for the Appellants.

2. The record indicates that the Respondents have been duly served in this matter. However, in our order dated 17.02.2021, we had directed the Appellant to take further steps in the context of the issue as to

whether the Appellant could avail of the benefit under section 14 of the Limitation Act particularly when there was an order for return of the plaint under Order 7 Rule X of the C.P.C.

3. Now, we find that all parties had already been served in this matter. Despite service, it is true there is no appearance put in by the Respondents. This is an appeal of the year 2013 questioning the impugned order dated 28.02.2013, by which the learned Trial Judge has rejected the plaint by resorting to the provision of Order 7 Rule XI of the C.P.C. In these circumstances, we are of the opinion that the matter can proceed now that service was completed upon all Respondents, even without the necessity to go into the issue of applicability of section 14 of the Limitation Act at this stage itself.

4. The impugned order suggests that the learned Trial Judge has rejected the plaint on the ground that it was barred by Limitation and also on the ground that it does not disclose cause of action.

5. The entire reasoning of the learned Trial Judge is to be found in the last paragraph of the impugned order which reads as follows:-

“After considering the plaint filed by the plaintiff it is prima facie it is clearly come under record that the present suit is barred by the Law of Limitation so also there is no pleading in the plaint to disclose the cause of action and the plaintiff had suppressed material facts in the pleadings and the document produced by the plaintiff does not create any cause of action under these circumstance the present plaint filed by the plaintiff hereby

rejected under order 7 Rule 11 of C.P.C. As the suit is filed without cause of action and therefore the same is liable to be rejected under Order 7 Rule 11 (a) (d) of C.P.C. As the plaint does not disclose any cause of action and in as much as from the statement made in the plaint is also barred by the Law of Limitation and the same is rejected under Order 7 Rule 11 (a) (d) of C.P.C. In view of this the present suit is rejected. Proceedings stand closed, Pronounced in the open Court.”

6. From the aforesaid, we are quite satisfied that the impugned order is required to be set aside. In the first place, from the perusal of the plaint, we find that the cause of action has been disclosed. In particular, reference is required to be made to the averments in paragraph 79 of the plaint. Besides, in such matters, the plaint has to be read in its entirety and on so reading, it is evident that there is a disclosure of the cause of action.

7. Secondly, the issue of limitation in this case, at the highest, was a mixed question of law and fact. Therefore, the plaint could not have been rejected, without issues being framed and the parties allowed to lead evidence.

8. That apart, the plaintiffs, in paragraphs 78J and 78K of the plaint had pleaded as follows:-

“78J. That the Plaintiffs were bonafidely and in good faith prosecuting the suit and their remedy of appeal before Hon'ble High Court of Delhi and Supreme Court of India after the order

dated 29.05.2004. Plaintiff states that they were diligently availing the remedies before the forums. However since the appeal before Supreme Court is dismissed, therefore the period from 30/05/2004 to 21.02.2011, on which date the documents were received back by the Plaintiffs to present the documents before this Hon'ble Court and the period from 17/08/1998 to 21/02/2011 is liable to be excluded for the purpose of limitation in terms of Section 14 of Limitation Act.

78K. That from the period of order of return of plaint till the release of the documents, the Plaintiffs were prosecuting their case diligently, bonafidely and in good faith were availing remedy of appeal before Hon'ble High Court of Delhi and Hon'ble Supreme Court of India. Plaintiff therefore states that the period from 30/05/2004 to 21/02/2011 is liable to be excluded for the purpose of computing the limitation period in the above suit.”

9. It is well settled that at the stage of considering an application under Order 7 Rule XI of the C.P.C., the defence of the defendants is quite irrelevant. It is only if the suit is found to be barred under any law on the basis of the statement in the plaint, can, the power under Order 7 Rule XI of C.P.C. be exercised.

10. The learned Trial Judge, has no doubt, adverted to these principles by making a brief reference to some decided cases, but the learned Trial Judge has failed to apply these very principles in the present case.

11. For the aforesaid reasons, we allow this appeal and set aside the impugned order dated 28.02.2013. The suit is now restored to the file of the learned Trial Judge who shall dispose off the same on its merits and in accordance with law.

12. The parties to now appear before the learned Trial Judge on 26.04.2021 at 10:00 a.m. and file an authenticated copy of this order.

13. In case the defendants in the suit do not appear, the Trial Judge to cause fresh notices to be served upon the defendants and only thereafter proceed in the suit.

14. The appeal is allowed in the aforesaid terms. There shall be no order as to costs.

BHARATI H. DANGRE, J

jfd/-

M.S. SONAK, J.