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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.No.4146 of 2018

and

C.M.P.No.22855 of 2018

Canara Bank
rep. by its Branch Manager,
Nungambakkam Branch,
No.4, Jambulingam Street,
Nungambakkam,
Chennai - 600 034

...Petitioner/1st Defendant

Vs.

Sealark Fisheries
rep. by its Prop. V.Narayanan
No.39/15, New Street,
Nungambakkam,
Chennai - 600 034.

...Respondent/Plaintiff

PRAYER: Civil Revision Petition under Article 227 of the Constitution of India to set aside the order dated 28.09.2018 passed in I.A.No.154/2017 in O.S.No.5878 of 2016 on the of the XVII Additional City Civil Court, Chennai.

For Petitioner : Mr.Vijayakumar for
Mr.G.Bharadwaj

For Respondents : Mr.S.C.Vishwanth

ORDER

This Civil Revision Petition is directed against the order passed by the XVII Additional City Civil Court, Chennai in I.A.No.154 of 2017 in O.S.No.5878 of 2016, dated 28.09.2018, wherein the trial Court dismissed the petition filed for rejection of the plaint.

2.The brief facts of the case would run thus:-

The respondent Sealark Fisheries availed loan a sum of Rs.1,75,000/- from the petitioner bank for purchase of a boat.



The boat was insured with the National Insurance Company Limited jointly by the petitioner bank and the respondent. However, unfortunately, on 22.01.1979, the boat met with an accident and the claim of the parties was repudiated by the insurance company on 30.01.1981. Hence, the petitioner and the respondent herein jointly filed a suit C.S.No.335 of 1983 against the insurance company for recovery of Rs.1,16,336/-. The suit came to be decreed on 28.02.1992. Aggrieved over the same, the insurance company preferred an appeal O.S.A.No.148 of 1992. In the interregnum, the insurance company deposited a sum of Rs.2,28,902/- with the petitioner bank. The OSA was dismissed on 23.06.2010.

3.The petitioner bank instituted a separate suit against the respondent for recovery of the loan amount. The said suit was transferred and renumbered in O.S.No.3659 of 1996. After contest, the suit got decreed on 07.10.1996. Assailing the Judgment and Decree, an appeal was preferred. Indisputably, during the pendency of the appeal, the respondent approached the petitioner bank to close the account under one time settlement and an amount of Rs.13,00,000/- was paid by the respondent and the loan account was closed on 03.04.2001. Subsequently, the appeal A.S.No.111 of 1998 came to be dismissed as withdrawn.

4.It is pertinent to note that after settling of the loan account, the respondent sent a letter to the petitioner bank seeking payment of Rs.2,28,902/-, which was deposited by the insurance company along with interest at 17.5%. The petitioner vide letter dated 23.05.2011 agreed to return only the amount deposited by the insurance company, but without interest. A Demand Draft for the said sum was sent and the same was received by the respondent. An execution petition was filed by the respondent for recovery of the amount of Rs.2,28,902/- with interest, however, it could not be numbered for the reason that there was no decree against the petitioner bank as it was only a co-plaintiff in the suit. C.M.P.No.320 of 2013 in O.S.A.No.148 of 1992, which was filed for modification of the decree directing the petitioner bank to pay the decree amount with interest, got dismissed holding that the petitioner was a co-plaintiff along with the respondent in C.S.No.335 of 1983 and it was filed after three years of the decision of the Division Bench.

5.The respondent also laid a complaint before the District Consumer Forum, Chennai North C.C.No.124 of 2016 for a direction to the respondent bank to pay Rs.2,50,000/- for deficiency in service; Rs.2,00,000/- for mental agony and



Rs.2,28,902/-, deposited by the insurance company with the petitioner bank on 28.05.2011. It appears that the matter was settled out of Court and a demand draft dated 12.01.2017 for a sum of Rs.3,35,426/- was given and the complaint was dismissed as withdrawn. It appears that the respondent simultaneously, filed the present suit in O.S.No.5878 of 2016 against the petitioner herein and the insurance company for recovery of Rs.2,25,241/- with interest at 19.5%.

6.It is the case of the plaintiff that he is entitled for interest on Rs.2,28,902/- deposited by the insurance company. According to the petitioner/defendant, the amount was deposited by the insurance company was kept in a lien account and hence, the respondent/plaintiff is not entitled for interest. The present application filed under Order VII Rule 11(a) & (d) r/w Section 151 of C.P.C for rejection of the plaint on the grounds that the suit is barred by limitation and hit by the principle of res-judicata was dismissed by the Trial Court. Aggrieved over the same, the defendant has come up with this revision.

7.Mr.Vijayakumar, learned counsel assisted by Mr.G.Bharadwaj would urge that the respondent was borrower and the amount was settled way back on 03.04.2001. The boat purchased by the respondent by availing loan from the petitioner bank met with an accident in the year 1979 and in view of the refusal by the Insurance Company to indemnify the loss, the petitioner along with the respondent filed a suit against the insurance company. The amount of Rs.2,28,902/- was deposited by the insurance company to the credit of the bank and after dismissal of the appeal preferred by the insurance company, the respondent settled the loan amount. He further added that the attempt made by the respondent to get interest on the deposit made by the insurance company was rejected by the Division Bench in C.M.P.No.320 of 2013 on the ground of limitation. That apart, the respondent bank has categorically stated in the letter dated 27.05.2011 that the respondent is not entitled for interest and hence, the suit filed in the year 2016 i.e., after lapse of 5 years is barred by limitation. It is also contended that the suit is abuse of process of law and it is liable to be strucked off. In support of his contention, the learned counsel placed reliance on the following Judgments:-

"1. A.S.No.708 of 2012 dated 30.06.2016
(Govindarajan Padayatchi vs. Premananda Vijayakumaran
& Prem Anand) ;

2.Civil Appeal No.2960 of 2019 (SC)
(Raghwendra Sharan Singh vs Ram Prasanna Singh (Dead));



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3.Civil Appeal Nos.1863-1864 of 2020 (Canara Bank vs. P.Selathal and others) and

4. 2020 SCC Online SC 562 (Dahiben vs. Arvinbhai Kalyanji Bhanusali)"

8.Per contra, Mr.S.C.Vishwanth, learned counsel appearing for the respondent would submit that the limitation is a question of law and fact and the same cannot be decided in the application filed under Order VII Rule 11. The learned counsel further contended that the respondent received the Demand Draft dated 24.05.2011 for a sum of Rs.2,28,902/- under protest and after dismissal of C.M.P.No.302 of 2013 in O.S.No.148/1992 dated 23.05.2015, the respondent sent a letter to the petitioner and hence, the suit cannot be said to be barred by limitation.

9.Heard the rival submissions and carefully perused the materials available on record.

10.In the case on hand, it is an admitted fact that the respondent availed loan from the petitioner in the year 1976 for purchasing a boat and it met with an accident on 22.01.1979. Since the insurance company repudiated the claim, the suit C.S.No.335 of 1983 was instituted jointly by the petitioner and the respondent herein. The said suit was decreed on 28.02.1992. The appeal preferred by the insurance company was dismissed on 23.06.2010. Even before dismissal of the appeal, the respondent paid Rs.13,00,000/- under one time settlement and the loan account was closed on 03.04.2001. After dismissal of OSA, the respondent wanted to get back the amount deposited by the insurance company Rs.2,28,902/- with interest from the petitioner bank.

11.Perusal of the records reveal that vide letter dated 24.05.2011, the petitioner has clearly denied payment of interest, while agreeing to pay Rs.2,28,902/-. The respondent sought to recover the amount with interest in C.M.P.No.320/2013 and the same was rejected by the Division Bench on 23.03.2015. As aforementioned, the complaint filed by the respondent before the District Consumer Forum for payment of the disputed amount with interest was compromised. Eventually, the respondent withdrew the complaint after receiving Rs.3,35,426/- from the petitioner bank on 10.05.2017.

12.At this juncture, we will consider the decisions cited by the learned counsel appearing for the petitioner.



(i) In the unreported Judgment in A.S.No.708 of 2012 dated 30.06.2016 (cited supra), the Division Bench of this Court has held as follows:-

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"10. It is also a settled principle of law that the plea of limitation is nothing but a question of law and facts, but however, the Court can very well reject a legal proceeding, if it is apparent on the face of the record that the same is barred by limitation. In the instant case, as rightly pointed out on the side of the respondents 1 to 5, no mention has been made with regard to disposal of Second Appeal No.1194 of 1988 and therefore, the plaintiff has schemingly suppressed the material facts in the plaint so as to institute the same within the period of limitation. Further, it is easily discernible that no cause of action has arisen to institute the present suit."

(ii) In Civil Appeal No.2960 of 2019 (SC) (cited supra), the Hon'ble Apex Court has held as follows:-

"8.Now, so far as the application on behalf of the original plaintiff and even the observations made by the learned trial Court as well as the High Court that the question with respect to the limitation is a mixed question of law and facts, which can be decided only after the parties lead the evidence is concerned, as observed and held by this Court in the cases of Sham Lal alias Kuldeep (supra); N.V.Srinivas Murthy (supra) as well as in the case of Ram Prakash Gupta (supra), considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11(d) of the CPC."

(iii) In Civil Appeal Nos.1863-1864 of 2020 (cited supra), the Hon'ble Apex Court has held as follows:-

11. At this stage, it is also required to be noted that the suits have been filed after a period of 15 years from the date of mortgage and after a period of 7 years from the date of passing of the decree by the DRT. In the plaints, it is averred that the plaintiffs came to know about the mortgage and the judgment and decree passed by the DRT only six months back. However, the said averments can be said to be too vague. Nothing has



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been averred when and how the plaintiffs came to know about the judgment and decree passed by the DRT and mortgage of the property. Only with a view to get out of the law of limitation and only with a view to bring the suits within the period of limitation, such vague averment are made. On such vague averments, plaintiffs cannot get out of the law of limitation. There must be specific pleadings and averments in the plaints on limitation. Thus, on this ground also, the plaints were liable to be rejected. As observed hereinabove, the plaints are vexatious, frivolous, meritless and nothing but an abuse of process of law and court. Therefore, this is a fit case to exercise the powers under Order 7 Rule 11(d) of the CPC. Both the courts below have materially erred in not rejecting the plaints in exercise of powers under Order 7 Rule 11(d) of the CPC. Both the courts below have materially erred in not exercising the jurisdiction vested in them.

(iv) In 2020 SCC Online SC 562 (cited supra), the Hon'ble Apex Court has held as follows:-

"15.8.The delay of over 5 and ½ years after the alleged cause of action arose in 2009, shows that the suit was clearly barred by limitation as per Article 59 of the Limitation Act, 1963. The suit was instituted on 15.12.2014, even though the alleged cause of action arose in 2009, when the last cheque was delivered to the plaintiffs.

The plaintiffs have failed to discharge the onus of proof that the suit was filed within the period of limitation. The plaint is therefore, liable to be rejected under Order VII Rule 11(d) of CPC.

Reliance is placed on the recent judgment of this Court rendered in Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by LR's. 15 wherein this Court held the suit would be barred by limitation under Article 59 of the Limitation Act, if it was filed beyond three years of the execution of the registered deed.

15.9.The plaintiffs have also prayed for cancellation of the subsequent Sale Deed dated 01.04.2013 executed by Respondent No.1 in favour of Respondent Nos.2 and 3; since the suit in respect of the 1st Sale Deed dated 02.07.2009 is rejected both



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under clauses (a) and (d) of Order VII Rule 11, the prayer with respect to the 2nd Sale Deed dated 01.04.2003 cannot be entertained.

16. The present suit filed by the Plaintiffs is clearly an abuse of the process of the Court, and bereft of any merit.

The Trial Court has rightly exercised the power under Order VII Rule 11 CPC, by allowing the application filed by Respondent Nos.2 and 3 which was affirmed by the High Court.

In view of the aforesaid discussion, the present Civil Appeal is dismissed with costs of Rs.1,00,000/- payable by the Appellant 15 Civil Appeal No.2960/2019 decided on 13.03.2019 to Respondent Nos.2 and 3, within a period of twelve weeks from the date of receipt of this Judgment....."

13. Now, the only question that arises for consideration in this case is whether the suit filed by the respondent in O.S.No.5878 of 2016 is liable to be struck off on the grounds of limitation and abuse of process of law.

14. As above mentioned vide letter dated 24.05.2011, the petitioner bank has categorically stated that the respondent is not entitled for interest on the sum deposited by the Insurance Company. It is not in dispute that the letter along with the demand draft for Rs.2,28,902/- was received by the respondent on 27.05.2011, however, after lapse of 5 years, the present suit came to be filed only on 17.08.2016 seeking interest amount. The submission of the learned counsel for the respondent that after dismissal of C.M.P.No.320 of 2013 dated 23.05.2015, the respondent sent a letter to the bank and hence, the suit is not barred by the limitation, cannot be countenanced because the suit has to be filed within the period of three years from the date of rejection of the claim of the plaintiff i.e., 24.05.2011. The present suit has been filed for recovery of money after five years. That apart, it is a clear case of relitigation and abuse of process of law.

15. In my considered view that the ratio laid down in the decisions cited supra would squarely apply to the case on hand. Therefore, the order of the trial Court is liable to be set aside.

16. In that view, this Civil Miscellaneous Appeal is allowed and the order dated 28.09.2018 passed in I.A.No.154/2017 in O.S.No.5878 of 2016 by the XVII Additional City Civil Court,



Chennai is set aside. The I.A.No.157 of 2017 is allowed. The
plaint in O.S.No.5878 of 2016 is struck off from the file. No
costs. Consequently, connected miscellaneous petition is closed.

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s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

skn
To

The Judge,
XVII Additional City Civil Court, Chennai.

+1 CC to Mr.G.Bharadwaj, Advocate sr 41681
+1 CC to Mr.S.C.Vishwanth, Advocate sr 41924.

C.R.P.No.4146 of 2018
and
C.M.P.No.22855 of 2018

SSD(CO)
SP(30/11/2021)