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

Date of Decision: 1st October, 2021

+ **C.R.P. 130/2018 & CM APPLs. 34577/2021 & 34578/2021**

GOBIND RAM KESWANI Petitioner
Through: Mr. Ashish Aggarwal, Advocate.
versus

RAM SHARAN RAI & ORS Respondents
Through: Mr. Amit Khemka, Mr. Satish Chand
Jha, Mr. Rishi Sehgal & Mr. Midhun
Aggarwal, Advocates for R-1.
Mr. M.A. Niyazi, Advocate for R-2, 4
& 5.

CORAM
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. This petition has been filed challenging the impugned order dated 27th February, 2018 by which an application under Order VII Rule 11 CPC which had been filed by the Petitioner/Defendant No.1 has been dismissed by the District Judge, Saket Courts, New Delhi (*hereinafter "Trial Court"*) in *Suit No. 959 of 2017* titled ***Ram Sharan Rai v. Gobind Ram Keshwani & Ors.***
3. The brief facts are that a suit for recovery of a sum of Rs.41,10,000/- was filed by the Respondent No.1/Plaintiff against the Petitioner as also the Respondent No.2 and other defendants. The Petitioner herein was Defendant No.1 in the suit and he filed an application under Order VII Rule 11 CPC raising various pleas.

4. For the purposes of this petition, primarily the issue of limitation has been raised. The submission of Mr. Aggarwal, Id. Counsel for Defendant No.1, is that the loan as per the plaint, was given in 2012 and there are promissory notes which are stated to be executed by the Defendant No.2, i.e. M/s NIHO Construction Limited. He submits that considering the provisions of Sections 2(j) and 3 of the Limitation Act, 1963 (*hereinafter "Act"*) read with Articles 19, 21 and 35 of the Schedule therein, the limitation for filing a suit in such circumstances, would be three years from the date when the loan was made and this period had expired in this case. Additionally, he disputes the Plaintiff's case that the Defendant No.1 is the Chartered Accountant of the Defendant No.2-Company. Instead, he states that the Defendant No.1 was a Chartered Accountant of the Plaintiff's daughter and had no relationship with the Defendant No.2-Company as such. In any event, Mr. Aggarwal, Id. Counsel, submits there was no privity of contract between him and the Plaintiff. It is his further submission that the promissory notes have also not been executed by him and hence there is no cause of action which exists against Defendant No.1. However, the suit may continue *qua* the other Defendants.

5. The Plaintiff on the other hand, relies upon Sections 2(j) and 3 of the Act read with Article 22 of the Schedule to argue that the limitation period would apply for a period of three years from the time when the demand is made. In this case, he submits that the demand was made in 2016 and the agreement as pleaded, is that the amount would be paid on demand as per paragraph 18 of the plaint. Thus, the suit is not barred by limitation. Mr. Khemka, Id. Counsel further submits that the entire evidence in the suit has already been recorded and hence the suit should proceed for final arguments.

6. This Court has considered the submissions made on behalf of the parties. It is the settled position of law that for an application under Order VII Rule 11 CPC, only the plaint needs to be considered and the defense of the Defendants cannot be considered. In the plaint, the Plaintiff pleads the background in which the loan was given, in paragraphs 12 and 13. Insofar as giving of the loan itself is concerned, it is the admitted position that the loan was given in 2012. However, in paragraphs 18 and 19, the plea of the Plaintiff is as under:

“....

18. That defendant no.1 gave three undated Promissory Notes, each for Rs.5,00,000/- (Rs. Five Lac only) duly filled by defendant no.1 on behalf of the defendant no.2 and also promised that the amount will be paid to plaintiff with promised rate of interest as on demand. The copies of Promissory Notes are annexed as **ANNEXURE P-2 (Colly).**

19. That due to the medical contingency plaintiff contacted defendant no.1 telephonically in the first week of September, 2016 from Jhansi (U.P.) and requested to pay back the invested amount as soon as possible citing his urgency for fund and defendant no.1 promised plaintiff that he would get the invested money released within the span of 24 hours. But, the defendant no.1 did not honour his promise.”

7. Thus, the pleading in the plaint is that there was an agreement that the amount would be returned on demand. The question as to whether such an agreement existed or not, is a question on which evidence would be required to be adduced. The further question is whether, if such an agreement existed, whether the limitation period would be governed by Articles 19, 21, 35 or Article 22. This would also be an issue which would have to be adjudicated at the stage of trial in as much as since there is no written agreement,

evidence would be required to be adduced to determine the terms of the agreement itself. Upon the terms of the agreement being determined, the limitation period would have to be applied.

8. In the suit, the following issues have already been framed vide order dated 3rd April, 2018:

“1 Whether Ms. Sangita Jaiswal is duly authorized to sign and verify the plaint and file the suit? OPP

2 Whether the suit is filed within limitation? OPP

3 Whether there is no cause of action to file the present suit qua the defendants no.2 to 5? OPD

4 Whether the plaintiff is entitled to the suit amount? OPP

5 Whether no promissory notes were executed by any of the defendants? OPD

6 Whether the plaintiff is entitled to any interest, if so, at what rate and for what amount? OPP

7 Relief.”

9. A perusal of these issues would show that the question as to the limitation has already been framed by the Court. At this stage, considering the background of the transactions between the parties and the alleged role of the Defendant No.1 being pleaded as the Chartered Accountant of Defendant No.2, since the promissory notes have been executed on behalf of the Defendant No.2, it cannot be stated that the plaint would be liable to be rejected *qua* Defendant No.1.

10. Since the recordal of evidence has already concluded in the matter and the issues relating to cause of action and limitation can be adjudicated on the basis of the evidence, at this stage, this Court is not inclined to entertain any challenge based on Order VII Rule 11 CPC. Moreover, in the impugned order, the Trial Court has safeguarded the interest of Defendant

No.1 by holding that the conclusion of the Trial Court would not bar enquiry at the time of final adjudication.

11. In view of the above discussion, all issues are left open between parties to be adjudicated on the basis of pleadings and oral evidence, on merits. The findings in the impugned order dated 27th February, 2018 would not come in the way of the Trial Court adjudicating the issue of limitation/cause of action afresh without being influenced in any manner by the impugned order. This Court has also not gone into the merits of the arguments as to the suit being barred by limitation as this Court is of the clear opinion that the evidence would be required to be gone into, to see as to what was the nature of the agreement between the parties in respect of the loan transaction.

12. In view of the above, the petition, along with all pending applications, is disposed of in these terms. The Trial Court may now proceed to hear final arguments and pass the final judgment in accordance with law.

PRATHIBA M. SINGH
JUDGE

OCTOBER 1, 2021
Rahul/Ms