

06.04.2022
Item No.17
Ct. No.7
CHC
(disposed of)

**C.O.675 of 2022
(Physical Hearing)**

**Chiu Lee Tannery
Vs.
Malhotra Chemical Corporation**

Mr. Partha Pratim Ray,
Mr. Rajdeep Bhattacharya,
Mr. Shareq Siddique,
Mr. Shahnawaz Alam
...for the petitioner

Mr. Malay Kr. Singh,
Mr. Sandip Dey,
Ms. Nabanita Kapat
...for the opposite party/
Caveator

The petitioner/defendant assails the order dated 25th February, 2022 passed by learned Civil Judge (Senior Division), Sealdah in Money Suit No.49 of 2020 declining to reject the plaint under Order 7 Rule 11 C.P.C.

Mr. Ray, learned advocate appearing for the petitioner/defendant submits that the outstanding amount, liable to be recovered, amounts to Rs.17,14,296/- for the period from 4th October, 2016 to 19th January, 2017. The total outstanding amount, upon addition of stipulated interest, comes to Rs.28,04,725/- to be payable by defendant to plaintiff. Admittedly, it is a suit for recovery of money.

Mr. Ray, advertent to Section 18 of the Limitation Act submits that there has been complete infraction of the provisions of law, which the learned court below has erroneously approached, without having truly understood the purport of the provisions contained therein.

Mr. Singh, learned advocate representing Caveator/opposite party submits that there has been confirmation of Ledger Account issued on 1st April, 2019, and as such the provisions, sought to be relied upon by Mr. Ray, would not be made applicable over the facts and circumstances of the case.

Upon perusal of the impugned order, it appears that the learned trial court has made an observation to the effect **“It is too early to make any comment over this point without evidence.”** The trial court has tried to appreciate the concept of cause of action for the institution of suit. The sum and substance of the impugned order is sufficient enough to reveal that the learned trial court was not inclined to reject the plaint without framing of issues and also without making collection of evidence, to be adduced by either of the parties to this case.

The points so raised surfaced over the limitation law, particularly under Article 18 of the Limitation Act, may be agitated once again at the time of final hearing of the suit upon framing of issues. The

petitioner/defendant is thus not remediless at this stage. Since framing of issues together with collection of evidence was stressed upon by the learned trial court, this Court is of the view that the impugned order does not call for any interference.

This would not however, prevent the trial Court from making any distinct issue pertaining to the maintainability of the suit together with other issues for the proper adjudication of the matter in controversy between the parties.

Petitioner, is, therefore, at his liberty to approach the learned court below for hearing of the issue pertaining to the maintainability of the suit at the preliminary stage, in accordance with provisions of law.

With this direction/observation the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)