IN THE HIGH COURT OF ORISSA AT CUTTACK

C.R.P. No.50 of 2008

M/s. Aroopa Building Centre and others. .... ***Petitioners***

M/s. Banshidhar Baug, S. Rath,
P.C. Das, S. Mohanty, Advocates

-versus-

Odisha Rural Housing & Development Corporation Limited. .... ***Opposite Party***

None – For the Opp.party

CORAM:
JUSTICE S. PUJAHARI

ORDER
13.09.2022

Order No.	
25.	**1.** The order dated 12.11.2008 passed by the learned 1st Additional Civil Judge (Senior Division), Bhubaneswar, in Money Suit No.188 of 2004 rejecting the application of the present petitioners (defendants therein) filed under Order-VII, Rule-11 of the Code of Civil Procedure, is called in question under Section 115 of the Code.
	2. Heard the learned counsel appearing of the petitioners and perused the relevant papers on record

including the impugned order vis-à-vis the contentions raised by the petitioners.

None participated in the hearing from the side of the opposite party.

3. As it appears, the present opposite party is the plaintiff in the Money Suit referred to above vide which he has sought for a money decree for Rs.43,71,474/- together with interest and cost against the present petitioner-defendants. The case of the plaintiff-Corporation is that it being a company wholly owned by the Government of Odisha, carrying on the object of giving financial assistance for housing purpose, sanctioned a loan of Rs.24.56 lacs in favour of the petitioner No.1-Firm on 30.03.2000 on the terms and conditions as stipulated in the agreement executed by the petitioner nos.2 and 3-partners, and the loan amount was disbursed on installments with the last installment disbursed on 02.02.2001. As per the agreement, the loan along with the interest was to be repaid in monthly installments within a period of ten years. As the defendants failed to make the repayment in breach of the agreement, the plaintiff issued a letter of request / demand on 28.06.2002 to the defendants for the repayment. Despite the same being followed by request for several times, as the defendants failed to make the repayment, the plaintiff filed the suit for the relief as stated above, before the Court below on 16.07.2004.

4. While the suit was at part-heard stage after framing of issues, the defendants filed an application under Order-VII, Rule-11 of the Code seeking for rejection of the plaint on two grounds, such as, the suit is barred by limitation and also barred under Section 8 of the Odisha Money Lenders Act, 1939. The learned trial Court on having heard both the sides rejected the application of the defendants mainly on the following three grounds;

(i) In view of the decision reported in 2008 (II) OLR 243, (not page 106) between

Jyotsna Rani Padhi and others vrs. Smt. Sushila Padhi and others, once the plaint is admitted, the suit cannot be dismissed under Order-7, Rule-11 of C.P.C.

(ii) Regarding the question of applicability of Articles 19, 20 and 21 or other Articles of the Limitation Act, evidence is required to be adduced. The period of agreement, i.e., ten years is yet to elapse. The date in question is within the covered period of limitation.

(iii) The plaintiff is a fully owned Government Corporation. Whether the plaintiff is a NBFC (Non Banking Financial Company) or not depends upon the issuance of the Notification by the Government and this has to be factually appreciated.

5. It is no more res-integra that the power under Order-VII, Rule-11 of the Code can be exercised by the trial Court at any stage of suit before registration or taking up the question of admission of the plaint, or after issuing summons to the defendant at any time before conclusion of the trial. For the purpose of deciding an application under the said Codal provision, the averments in the plaint are germane, and the plea, if any, taken by the defendant would be wholly irrelevant. (***See*- *Saleem Bhai and others vrs. State of Maharashtra and others,*** reported in (2003) 1 SCC 557).

6. In the case of ***Hardesh Ores (P) Ltd. vrs. Hede & Company,*** reported in (2007) 5 SCC 614, the Apex Court ruled as follows:-

> "25. The language of Order 7 Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of clause (d) of Order 7 Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does nor does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint, if taken to be correct in their entirety, a decree would be passed. The averments made in the

> plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this Court in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success 1 and Popat and Kotecha Property v. State Bank of India Staff Assn."*

7. Reverting to the case at hand, to reiterate, according to the plaintiff, the loan was sanctioned on 30.03.2000, disbursement was completed on 02.02.2001, and due to non-repayment, request / demand for repayment was made on 28.06.2002. It is further stated in the plaint that as per the terms of the agreement the rate of interest was revised on 01.09.2000 under intimation to the defendants that since the suit claim is governed by Article 19 read with Article 21 of the Limitation Act, 1963, which provides the limitation period to be three years from the date of the loan, the learned Court below fell in grave error by taking into consideration the period of ten years, i.e., the time stipulated under the agreement for repayment, as the period of limitation.

8. In the case of ***Jailebdeen vrs. Mohammed Basheer,*** reported in AIR 1992 Kerala 31, it was held that Article 21 of the Limitation Act will have application only for money lent under an agreement that it shall be payable on demand, and not an agreement which carries the terms and conditions otherwise. In the case covered by the said decision, the agreement was to the specific effect that the entire amount was to be repaid after payment of the particular installment, and on demand. But, in the present case, as per the pleading of the plaintiff vide paragraph-4 of the plaint, the repayment of the loan along with interest was to be made in monthly installments to be payable within the period of ten years, and the defendant-petitioners executed agreement accordingly.

9. According to the petitioners, the opposite party being a non-banking financial institution and the same having not been notified as 'Bank' as envisaged in Section 2(1)(a)(x) of the Odisha Money Lenders' Act, 1939, its business of lending money came within the purview of the said Act, and it being not registered under the said Act, the suit filed by it against the petitioners is barred by Section 8 of the said Act. As it appears, vide the notification dated 27.10.1952 published in Odisha Gazette on 09.01.1953, all the scheduled banks were exempted from the operation of Sections 5 and 8 of the aforesaid Act. It is further brought to the notice of this Court that vide the Notification dated 19.04.2017 of the State Government in Revenue and Disaster Management Department, the non-banking financial companies which have been registered with the Reserve Bank of India, and holding a certification of registration under Section 45-IA of the Reserve Bank of India Act, 1934, became exempted from operation of all the provisions of Odisha Money Lenders' Act, 1939, for the period they hold a valid registration certificate under the said Act. Section 3 of the Odisha Money-lenders' Act amply empowers the Government, by notification for any special reason or reasons to be stated in such notification, exempt any money-lender or class of money-lenders or any class of loans in the whole or any part of the State of Orissa from the operation of all or any of the provisions of the said Act. Whether the present plaintiff has been granted any exemption or in respect of such loans any exemption is granted or not, is a question of fact to be decided on the evidence adduced in this regard. Therefore, it is too premature to say that the plaintiff-opposite party has got no exemption under the Odisha Money-lenders' Act, 1939 and, as such, it is incompetent to file the suit to realize the loans and hence, the plaint deserves to be rejected. Although in support of his contention, the learned counsel for the petitioners has placed reliance on a judgment of the Kerala High Court in the case of ***M/s. Sundaram Finance Ltd. vrs. State of Kerala and others,*** reported in AIR

2010 Kerala 80, what I find, the present case is in a different footing, inasmuch as in the reported case there was no dispute that the appellants who were registered under the Companies Act, were not carrying on money lending business in accordance with the provisions of the said Act and, accordingly, they were held to be not entitled to the benefit of the exception clause – (f) under Section 2(7) of the Kerala Money Lenders' Act which defines "money-lender".

10. When the question raised is that of limitation or other statutory bar, before allowing the same to be addressed under the provision of Order-VII, Rule-11 of C.P.C., it is to be seen as to whether the same is purely a question of law or a mixed question of fact and law. If the same appears to be a mixed question of fact and law, such a question cannot be dealt with under Order-VII, Rule-11 of C.P.C., inasmuch as for an appropriate decision in that regard, the evidence to be adduced by both the sides on the said issue needs to be appreciated.

11. In the case at hand, the learned trial Court appears to have rightly observed vide the impugned order that the questions of limitation and other statutory bar as raised by the defendants can be addressed on the basis of facts and the evidence to be adduced by the parties at the trial. This Court, therefore, does not find any patent illegality or impropriety in the impugned order.

12. In the result, the C.R.P. stands dismissed.

13. Urgent certified copy of this order be granted on proper application.

(S.Pujahari)
Judge

MRS