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C.R.P.(PD)No.2217



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2022

CORAM:

THE HON'BLE MR. JUSTICE K.KUMARESH BABU

C.R.P.(PD)No.2217 of 2016
and C.M.P.No.11488 of 2016

1.Ganga Educational & Welfare Trust
Represented by its President,
Natarajan
having office at Sri Ganga Matriculation,
Higher Secondary School,
Ingur – 638 058, Perundurai Taluk.

...Petitioners

2.K.R.Paramasivam
3.M.Murugaboopathi
4.P.Ganapathy
5.P.Jeganathan
6.R.Kolandasamy

Vs.

1.E.Valliammal
2.T.C.Thangaraj
3.T.Kannan
4.K.V.Kandasamy
5.Eswari
6.T.Jeganathan
7.A.Murugavel
8.M.Thangamuthu
9.S.D.Ramasamy
10.A.M.Kandasamy

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair order and decretal order of the District Munsif, Perundurai dated 13.06.2016, in dismissing I.A.No.476 of 2015 in O.S.No.79 of 2010 filed under Order VII Rule 11 of the Code of Civil Procedure, 1908.



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For Petitioners : Mr.V.Lakshmi Narayanan
For Respondents : Mr.V.Anandhamurthy for R1 to R8
R9 & R10 – No appearance

ORDER

The instant Civil Revision Petition has been filed challenging the fair and decretal order of the Court below dismissing an application filed under Order VII Rule 11 read with Section 151 of C.P.C.

2.The case of the petitioner is that the first petitioner Trust has been formed by the petitioners 2 to 9 and the respondents and they were Members cum Directors of the petitioner Trust. As certain Members of the Trust had acted against the interest of the Trust, the first petitioner Trust had issued a show-cause notice calling upon such individuals to submit their responses. On 09.06.2002, the General Body of the first petitioner herein passed a resolution removing the respondents from the Trust.

(i).The respondents herein had filed a suit in the year 2010 challenging the resolution dated 09.06.2002 and for a declaration that they were continuing to be the Trustees of the first petitioner Trust and for a consequential permanent injunction restraining the defendants 2 to 9 therein from any way and in any manner prevent the plaintiffs in participating in meeting and other proceedings of the first petitioner Trust.



(ii).The suit was taken up for trial and is in the process of examining the defendant side witnesses after the plaintiffs side evidence was closed. At this juncture, the petitioner herein along with three other persons had filed an application under Order VII Rule 11 read with Section 151 of C.P.C. seeking to reject the plaint on the ground that the suit as framed by the respondents/plaintiffs is barred by Article 58 of the Limitation Act. Resisting the same, the respondents herein filed a counter statement contending that the evidence of the plaintiffs were closed and that DW1 had also filed the proof affidavit. At that stage, the respondents gave a notice to the petitioner to produce some documents which were in the custody of the petitioners/defendants. They have also averred that the suit has been laid after the honourable acquittal by a criminal Court in a complaint made by the Trust. The allegations made by the Trust for removal of these respondents and the allegations in the criminal complaint filed by the Trust were one and the same. After the criminal Court has held that the allegations are baseless and acquitted the respondents, the respondents had filed the present suit and hence the suit is not time barred and is well within the period of limitation.

3.The learned Trial Judge had considered the case of the respective parties by its order dated 13.06.2016 had dismissed the application filed by the petitioners holding that the question of limitation is a question of mixed facts and law and that the facts could not be decided at the present stage, and to decide the same evidences



put-forth by both the parties have to be taken into consideration.

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4. Being aggrieved against the said order, the present revision has been filed.

5. Heard Mr.V.Lakshmi Narayanan, learned counsel for the petitioners and Mr.V.Anadhamurthy, learned counsel for the respondents 1 to 8.

6. Learned counsel for the petitioners vehemently contended that the Court below wholly erred in rejecting the application filed under Order VII Rule 11 by holding that it is not the correct stage when such an application could be entertained and that the question of law being mixed question of facts and law could only be decided after the trial is over.

7. It is also further argued that the resolution of the first petitioner removing the respondents as Members/Directors of the Trust was passed on 09.06.2002 which was the crucial date when the right to sue first accrues and that the acquittal in the criminal proceedings could not be a fact that can be considered or is not continuous cause of action for the respondents to institute a suit.

8. Learned counsel for the petitioners also relied upon the following judgments:



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(i) A Judgment of Hon'ble Maharashtra High Court in the case of

Saleem Bhai and Ors vs. State of Maharashtra and Ors. in Appeal (Civil)

No.8518 of 2002 dated 17.12.2002.

(ii) A Judgment of Hon'ble Karnataka High Court in the case of

M/s.Bharat Electronics Limited vs. V.Ethiraj reported in ***AIR 2000 Kant 314.***

(iii) A Judgement of Hon'ble Supreme Court in the case of

N.V.Srinivasa Murthy & Ors. vs. Mariyamma (Dead) by Proposed Lrs. &

Ors. in Civil Appeal No.4500 of 2004 reported in ***2005 0 AIR (SC) 2897.***

(iv) A Judgment of Madurai Bench of this Court in the case of

Rajapalayam Municipality through its Commissioner vs. Jayabhaskaran

and 10 others in S.A.No.791 of 1998 dated 04.12.2012.

9.Countering his arguments, Mr.V.Anadhamurthy, learned counsel for the respondents 1 to 8 would draw my attention to the stage at which the proceedings had gone through. According to him, the present suit is posted for cross-examination of DW1. At that stage, the respondents had called upon the petitioners to produce certain documents and feeling that if the documents sought for were to be produced it would be detrimental to the case of the petitioner they have moved the present application without any rhyme or reason.



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10. Supporting his arguments, learned counsel for the respondents 1 to 8 relied upon the following judgments:

(a) A Judgment of the Hon'ble Supreme Court in the case of ***Shakti Bhog Food Industries Limited vs. Central Bank of India and Another*** reported in (2020) ***17 SCC 260***.

(b) A Judgment of the Hon'ble Supreme Court in the case of ***Ram Prakash Gupta vs. Rajiv Kumar Gupta and Ors. in Civil Appeal No.4626 of 2007*** (arising out of SLP (C) No.8781 of 2006) reported in ***2007(6) ALLMR(SC) 953***.

11. I have considered the arguments of both the counsel and perused the materials produced before this Hon'ble Court.

It is a well established principle of law that the issue of limitation is an issue that can be decided by a mixed question of facts and law.

12. The facts of the case is that a resolution has been passed by the General Body of the first petitioner Trust removing the respondents from being the Members and Directors of the Trust. On certain allegations that they have acted against the interest of the Trust. The Trust had also initiated a criminal complaint on the same



set of facts which had ended in acquittal of the respondents herein, after which they had instituted the present suit.

13.The cause of action as described by the respondents/plaintiffs for the initiation of the suit is as follows:

“(i).The cause of action for the suit arose on 31.12.1997 when the plaintiffs joined as Members of the Trust and all subsequently dates when the plaintiffs were being Trustees and holding offices, on the dates when the plaintiffs contributing to the development of the Trust activities on the dates when the defendants 2 to 9 lodged criminal complaints against the plaintiffs on 10.01.2007 when the plaintiffs were acquitted from the cases and on all subsequent dates when the defendants 2 to 9 assured the plaintiffs to reinstate them in to the Trust at Ingur Village, Perundurai Taluk within the territorial jurisdiction of this Hon’ble Court.

(ii).The Members of the first defendant Trust including the plaintiffs and the defendants 2 to 9 started the first defendant Trust in 1997 and through the Trust they started educational institution viz., “Sri Ganga Higher Secondary School” Ingur Village, Perundurai Taluk by



the President-ship of one Eswaramoorthy. Subsequently, the said Eswaramoorthy was elected as Secretary/Correspondent in the year 2000. The said school was developed tremendously under the management of the said Eswaramoorthy. The second plaintiff is the treasurer of the said institution. Under those circumstances having eye over the management by Eswaramoorthy, the defendants 2 to 9 raised some false allegations against the said Eswaramoorthy and also lodged false complaints before the Chennimalai Police Station and the plaintiffs 1 to 7 were charged by the Police and after trial all of them were acquitted from the said charges by the learned District Munsif Cum Judicial Magistrate, Perundurai by its judgment dated 10.01.2007.

(iii).In the above said circumstances the plaintiffs received a show cause notice from the first defendant's Trust dated 02.05.2002 and called for explanations about the above said false complaints. The plaintiffs gave proper reply to the notice at once. Even though without satisfying the explanations by the plaintiffs they were removed from the Membership of the Trust by its resolution passed in the General Body Meeting held on 09.06.2002. The certified copy of the resolution passed by the first defendant Trust is filed herewith. The above said removal was effected by the District Registrar on 17.09.2002 and the certified



copy of the same also filed herewith. The only allegation against the plaintiffs for their removal from the Trust was the criminal cases pending against them which are all ended in acquittal.”

14.The perusal of the cause of action as shown by the respondents/plaintiffs in the plaint *prima-facie* satisfies that the suit is laid within the period of limitation. As has been repeatedly held by this Hon’ble Court and the Hon’ble Apex Court, the Court cannot travel beyond the averments in the plaint and look into the averments made by the defendants in their written statement or otherwise to decide an application under Order VII Rule 11 CPC. If the averments/allegations of the petitioners are to be gone into, the facts are also to be decided which has been disputed by the parties. Hence, in the present case, the issue of limitation has to be decided on the basis of the facts pleaded by the parties.

15.The judgments relied upon by the learned counsel for the petitioners as follows:

(a) **2005 4 SCC 683** is a case where the Court had held that there was no cause of action to institute the suit and held on the fact stated in the plaint, the suit has framed is *prima-facie* barred by law of limitation and on the provisions of the Specific Relief Act has also Order II Rule 2 C.P.C. But, in the present case on hand, even according to the petitioners, this Court is called upon to look beyond the



averments in the plaint to decide the issue which this Court will restraint to do so.

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(b) A Judgment of this Court in ***S.A.No.791 of 1998 dated 04.12.2012*** and ***AIR 2000 Kant 314***. Both these judgments relates to the issue as to when a right accrues to sue to calculate the period of limitation.

It is worthwhile to note that the question answered by the Courts in both the cases where after the full fledged trial based upon which a Judgment and Decree came to be passed by the Trial Court and which was the subject matter of further appeals. The present case issue relating to when a right accrues to sue is also a mixed question of fact and law which could only be decided after the evidence were led by both the parties and hence, these two judgments relied upon by the petitioners could not be relied upon to state that the Court has to also look into the same to reject the plaint under Order VII Rule 11, as again the Court would have to travel beyond the averments made in the plaint to decide the issue.

16.The judgment relied upon by the counsel for the petitioners of the Hon'ble Supreme Court ***dated 17.12.2002*** made in ***Civil Appeal No.8518 of 2002***, is a judgment to which no quarrel could be made as it is a well established principle that an application under Order VII Rule 11 could be filed at any time before the



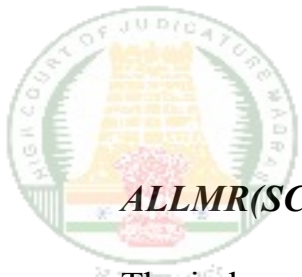
conclusion of the trial. The fact relating to the case is that when the defendants in the suit had filed application under Order VII Rule 11 C.P.C, the Trial Court had directed the defendants to file their written statement which was the subject matter of challenge.

17.The Hon'ble Apex Court had categorically held that for deciding an application under Order VII Rule 11 only the averments in the plaint are germane and the plea taken by the defendant in the written statement would be wholly irrelevant and set aside the order passed by the Trial Court and remitted the matter back to it on the ground that the Court below has not exercised its jurisdiction vested in it. In the present case, the Court below had considered the arguments made by the petitioners were rejected.

18.On an analysis of the judgments referred to by the learned counsel for the respondents is as follows:

(a) ***Shakti Bhog Food Industries Limited vs. Central Bank of India and Another*** reported in ***(2020) 17 SCC 260***.

(b) ***Ram Prakash Gupta vs. Rajiv Kumar Gupta and Ors. in Civil Appeal No.4626 of 2007*** (arising out of SLP (C) No.8781 of 2006) reported in ***2007(6)***



ALLMR(SC) 953.

The judgment reported in ***(2020) 17 SCC 260*** has categorically held that it is a well established principle that the cause of action for filing a suit would consist of bundle of facts and that the question of limitation would also be a mixed question of facts and law.

19. In the present case on hand, according to the petitioners, the issue of limitation starts on 09.02.2002 when the first petitioner passed a resolution. According to the respondents, the cause of action continued and when the criminal Court acquitted them for certain charges which were also basis for them being removed from the Trust, the limitation to sue continue to operate till the date of acquittal and hence the suit has been instituted within time. This is the disputed question of fact which have to be gone into by the Court below.

20. On the facts of the present case, the issue of limitation is a mixed question of facts and law which could also be an issue that could be dealt with by the Trial Court as a preliminary issue. Hence, the facts and circumstances of this case, no interference is called for against the fair and decretal order made in I.A.No.476 of 2015 in O.S.No.79 of 2010 on the file of the District Munsif, Perundurai and hence, this Civil Revision Petition fails and is dismissed. No costs. Consequently,



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connected miscellaneous petition is closed.

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21.Considering the fact that the suit is pending over a period of 7 years, the Court below is directed to dispose of the suit in accordance with law as expeditiously as possible.

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Index: Yes/No
Speaking Order/Non-Speaking Order
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To

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The District Munsif, Perundurai.



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K.KUMARESH BABU, J.

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