

CR No.1327 of 2022

Date of Decision : 22.04.2022

M/s Samsung India Electronics Pvt. Ltd. through its Authorized Signatory
Mr. Parveen Sangwan and Another

....Petitioners

VERSUS

M/s Satya Enterprises through its partner Jeewan Kumar Gupta

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Anil Mehta, Advocate for the petitioners.

ALKA SARIN, J.

The present civil revision petition under Article 227 of the Constitution of India has been filed for setting aside the impugned order dated 01.10.2021 passed by the Civil Judge (Junior Division), UT Chandigarh whereby the application filed by the defendant-petitioners under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short 'CPC') for rejection of the plaint being barred by limitation has been dismissed.

Learned counsel for the defendant-petitioners has contended that the suit itself was barred by limitation and was not maintainable. It has been contended that admittedly the amount in question was deposited on 29.08.2013 and the suit has been filed on 20.08.2018, after a delay of five years, and hence the suit being barred by limitation, the plaint was liable to be rejected under Order VII Rule 11 CPC. It is further the contention that the Trial Court has wrongly relied upon Article 22 of the Limitation Act, 1963 to hold that the suit was filed within limitation. In support of his contention learned counsel for the petitioners has relied upon judgments of the Hon'ble

Supreme Court in cases **Dahiben vs. Arvinbhai Kalyanji Bhanusali [(2020) 7 SCC 366]**, **Shiv Shakti Coop. Housing Society, Nagpur vs. Swaraj Developers & Ors. [(2003) 6 SCC 659]**, **Gurudevdatto VKSSS Maryadit & Ors. vs. State of Maharashtra & Ors. [(2001) 4 SCC 534]**, and **Nathi Devi vs. Radha Devi Gupta [(2005) 2 SCC 271]**.

I have heard learned counsel for the petitioners.

The only ground on which the application under Order VII Rule 11 CPC had been filed by the defendant-petitioners is that the suit itself is barred by limitation. It is trite that while deciding an application under Order VII Rule 11 CPC only the contents of the plaint along with any document filed with the plaint are to be seen. Neither the written statement nor the averments made in the application can be considered for rejecting the plaint under Order VII Rule 11 CPC. In exercise of its powers under this provision, the Court should determine if the assertions as made in the plaint are contrary to statutory law or barred by any law and whether a case for rejecting the plaint at the very threshold is made out. What needs to be seen is whether the averments as made in the plaint, in conjunction with the documents relied upon in the plaint, would result in a decree being passed. On a meaningful reading of the plaint when it is found that the same is vexatious and does not disclose any right to sue, the Court would exercise the powers under Order VII Rule 11 CPC.

Hon'ble Supreme Court in case of **Salim D. Agboatwala & Ors. vs. Shamalji Oddhavji Thakkar & Ors. [AIR 2021 SC 5212]** has held as under :

“10. Insofar as the rejection of plaint on the ground of limitation is concerned, it is needless to emphasis that

limitation is a mixed question of fact and law. It is the case of the appellants/plaintiffs that only after making inspection of the records in connection with the suit land available in the office of defendant No.3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before the ALT were collusive, fraudulent and null and void. The appellants/plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.”

In case of **Chhotanben & Anr. vs. Kiritbhai Jalkrushnabhai Thakkar & Ors. [2018(5) RCR (Civil) 163]**, the Supreme Court held as under :

“12. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants

(plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.”

Further in the case of **Urvashiben & Anr. vs. Krishnakant Manuprasad Trivedi** [2019(1) RCR (Civil) 366], it has been held as under:

“15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC.”

In the present case, a suit for recovery has been filed against the defendant-petitioners. As per averments made in the plaint, within a period of three years from the date of issuance of the demand draft for Rs.2 lakhs to the defendant-petitioners, a notice was sent to the defendant-petitioners on 28.05.2016, which notice has been appended with the plaint. It has further been averred that the said notice was sent by Registered Post. On a plain reading of the plaint it cannot be inferred or deduced that the suit is barred by limitation. On the face of it, the averments made in the plaint make out a case, within limitation, against the defendant-petitioners. Exercise of powers

under Order VII Rule 11 CPC are drastic ones and a duty is cast on the Court to determine whether the plaint on a plain reading along with documents discloses a cause of action. No other document, be it a written statement or application for rejection of the plaint, can be looked into at this stage. On a meaningful reading of the plaint if the same is not barred by any law, case for rejection of the plaint at the threshold would not be made out. The judgment relied upon in Dahiben's case (*supra*) would not help the defendant-petitioners inasmuch as the said judgment also lays down that if on a meaningful reading of the plaint cause of action is disclosed, the powers under Order VII Rule 11 CPC cannot be exercised. The judgment in Shiv Shakti Coop. Housing Society's case (*supra*) is qua the maintainability of the revision petition. The judgment in Gurudevdat's case (*supra*) is on interpretation of statutes and is not relevant to the present case. Similarly, the judgment in Nathi Devi's case (*supra*) is also not applicable.

In view of the law laid down by the Hon'ble Supreme Court as well as on a plain reading of the plaint, it cannot be held that the suit is barred by limitation.

In view of the discussion above, I do not find any merit in the present revision petition which is accordingly dismissed.

Dismissed.

22nd April, 2022
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO