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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.431 OF 2023

Hemlata Dwarkadhish Joshi & Ors. … Applicants
V/s.
Naman Enterprises, through partners
Praatapbhai Mansukhlal Shah & Ors. … Respondents

Mr. Mutahhar Khan with Mr. Vishal Mehta and Mr. Ranjyot Panesar i/by MV Law Partners for the applicants.

Mr.Prajakt Arjunwadkar for the respondents.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 20, 2023

P.C.:

1. **Rule**. Rule is made returnable forthwith by consent of the parties.

2. This is an application under Section 115 of the Code of Civil Procedure, 1908 ("CPC" for short) challenging judgment and order passed by the Trial Court rejecting application of the applicants filed under under Order 7 Rule 11(d) of the CPC raising issue of limitation as regards suit for recovery of amount.

3. Respondent No.1 is original plaintiff who has filed suit for recovery of amount of Rs.8,93,04,163/- with interest at the rate of 24% per annum. Till the recovery of said amount, injunction is sought against defendants from creating third party rights in relation to the suit property.

4. The suit is based on development agreement executed in favour of the plaintiff by the defendants. The date of development agreement is 9 December 2011. The cause of action seeking recovery of amount as evidenced from the development agreement is cancellation of development agreement on 20 August 2018. Such statement is borne out of paragraph 26 of the plaint. Therefore, the cause of action for filing suit for recovery of amount and consequential injunction accrued on 20 August 2018.

5. The applicants, therefore, filed application under Order 7 Rule 11(d) of the CPC contending the suit barred by limitation. The Trial Court by the impugned order rejected the application based on order passed by the Apex Court in **Cognizance for extension of Limitation, In Re**. Reported in (2022) 3 SCC 117.

6. I have heard learned advocates for the parties.

7. On perusal of the plaint, following factual scenario emerges: (i) 20 August 2018 is the date of termination of development agreement; (ii) 19 August 2021 as per Article 113 of the Limitation Act ordinary limitation would have expired.

8. At this stage, it is necessary to consider paragraph 5 of the judgment in the case of Cognizance for extension of Limitation, In Re (supra). Paragraphs 5, 5.1. 5.2. 5.3 and 5.4 reads thus:

> "5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on

public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

5.1. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

5.3. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

5.4 It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

9. Clause 5.3 of the said judgment is relevant for adjudication of the issue involved. As noted above, in ordinary course, limitation to file suit for reliefs claimed would have expired on 19 August 2021. Therefore, first part of clause 5.3 will apply. Therefore, all persons whose limitation expired between 15 March 2020 till 28 February 2022 are entitled to benefit of extension of limitation for a period of 90 days. It is only in those cases where balance period of limitation as on 1 March 2022 exceeds 90 days, such persons shall be entitled to the benefit of longer period of limitation.

10. According to the learned advocate for the plaintiff, the balance period of limitation needs to be construed by keeping 15 March 2020 as the focal date. According to him, whatever was the balance period of limitation as of 15 March 2020, he will be entitled to the benefit of the same period after 1 March 2022. In my opinion, said interpretation would run counter to the first part of clause 5.3 of the judgment of the Apex Court. First part of clause 5.3 would apply to all cases where period of limitation would ordinarily expire between 15 March 2020 till 28 February 2022. Therefore, it was necessary for the plaintiff to have filed suit within 90 days from 1 March 2022. The plaintiff has filed present suit on 16 May 2023. Therefore, it is beyond period of 90 days from 1 March 2022. Therefore, on prima facie reading of the plaint, the suit is barred by limitation and the Trial Court ought to have rejected the plaint.

11. On overall consideration of the aforesaid reasons, following order is passed:

12. Rule is made absolute in terms of prayer clauses (b) and (c).

13. Considering the issue involved, the effect of the present order shall remain stayed for a period of six weeks from today.

14. The Trial Court shall not proceed with the suit for a period of six weeks from today.

(AMIT BORKAR, J.)