



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 6352 OF 2022

- 1) M/s Metal Traders Co. Through its
Proprietor, Shi Rohit Agrawal,
Bangalow No.1 Friends Enclave,
Ghatate Layout, Civil Lines Nagpur -
440 010
(Original Defendant)

.... Petitioner(s)

// VERSUS //

- 1) Shri Rajkumar Jindalal Chhabariya
(Huf) Represented by : Shri Mithilesh
Rajkumar Chhabariya Aged 30 years,
Occ. Business, R/o Shop No.46,
Wholesale Cloth Market, Gahdhibagh
Nagpur – 440 002
(Original Plaintiff)

... Respondent(s)

Shri S.M. Pande, Advocate for the Petitioner/s

Shri Anirudha Ananthkrishnan, Advocate for the respondent-sole

CORAM : ANIL S. KILOR, J.
DATED : 12.12.2023

ORAL JUDGMENT :

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent by the parties.

3. In this petition, permitting the defendant/petitioner to defend the suit with a condition to deposit 50 % payment of suit claim vide order below Exh.14 dated 16.03.2022 passed by 3rd Jt. Civil Judge Junior Division, Nagpur in Summary Civil Suit (SCS) No.118 of 2020, is under challenge.

4. It is the case of the petitioner that the transaction whereby Rs.5,00,000/- was alleged to have been paid by the petitioner is of the year 2013, whereas, the suit was filed on 10.12.2019 i.e. beyond the period of limitation of three years.

5. Despite the same, while passing the conditional order, the learned trial Court relied upon the promissory note which was executed in the year 2019. Admittedly, the same is of beyond the period of limitation of three years, therefore, the promissory note will not extend the period of limitation.

6. It is therefore, submitted that the suit is not maintainable on the ground of limitation.

7. It is further submitted that as the suit does not fulfill the pre-requisites of Order 37 of Code of Civil Procedure, the same cannot be treated as Summary Suit. It is therefore, prayed that, the impugned order may be set aside to the extent the condition to deposit 50 % payment of suit claim.

8. On the other hand, the learned counsel for the respondent/plaintiff strongly opposes the present writ petition and submits that the learned trial Court has rightly put the condition of 50 % amount. He accordingly, prays for dismissal of the present writ petition.

9. From the record, it is evident that the alleged transaction is of the year 2013 and the promissory note which is relied upon for holding that the suit was filed within limitation, is dated 06.07.2019 i.e. beyond the period of three years from the date of the transaction.

10. In the circumstances, as the defendant has made out a substantial case, which is likely to be succeeded, I am of the opinion that the conditional order is unwarranted. Accordingly, I pass the following order:

(i) The writ petition is **allowed**.

(ii) The order below Exh.14 dated 16.03.2022 passed by by 3rd Jt. Civil Judge Junior Division, Nagpur in Summary Civil Suit No. No.116 of 2020, is hereby modified and thereby, the defendant is permitted to defend the suit unconditional.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]