



A.No.4898/2022 in CS.No.253/2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	08.03.2023
Pronounced on	27.04.2023

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Application No.4898 of 2022
in
C.S.No.253 of 2012

L.Kodiswaran

...

Applicant/plaintiff

Vs.

Rainbow Foundations Ltd.,
rep. by Mr.Gajraj Jain.

...

Respondent/8th defendant

Prayer :- Application filed under Order XIV Rule 8 of O.S. Rules read with Section 151 of CPC, praying to reject the Counter Claims filed by the 8th defendant along with the written statement in C.S.No.253 of 2012.

For Applicant : Mr.K.S.Ganesh Babu
For Respondent : Mr.R.Thiagarajan

ORDER

The Application has been filed by the applicant to reject the Counter Claims filed by the 8th defendant along with the written statement in



C.S.No.253 of 2012 on the ground that it is barred by limitation.

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2.Heard Mr.K.S.Ganesh Babu, learned counsel appearing for the applicant/plaintiff, and Mr.R.Thiagarajan, learned counsel appearing for the respondent/8th defendant, and perused the materials available on record.

3. The avernments of the plaint in brief, as hereunder:

The respondent /8th defendant filed his written statements, in which he made a counter claim for the relief of specific performance on the basis of the sale agreement dated 12.01.2005 along with the relief of a declaration for equitable charge over the suit-schedule property and for a permanent injunction. The sale agreement was entered into between the 8th defendant and the plaintiff, his parents, and the defendants 1 to 7 for the purpose of purchasing a suit property for sale consideration of Rs.2,05,50,000/- on 12.01.2005. As per the sale agreement, the 8th defendant has paid a total sum of Rs.45,00,000 as advance and as part of the sale consideration.

3.1. As per the terms of the sale agreement, the 8th defendant has to



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pay a sum of Rs.73,00,000/- to M/s. Park Town Benefit Fund Ltd. on or before 15.01.2005 and discharge the equitable mortgage created by deposit of original title deeds. The 8th defendant has to pay the balance sale consideration of Rs.87,50,000/- within 45 days from the execution of the agreement of the sale or at the time of the vendors handing over the actual vacant possession of the schedule mentioned property to the purchaser. The balance sale consideration of Rs.87,50,000/- has to be paid on or before 26.02.2005.

3.2. Further, the plaintiff and others had executed a general power of attorney on 12.01.2005 and registered it in favour of the 8th defendant. The 8th defendant was not ready and willing to pay the balance sale consideration of Rs.87,50,000/- as per the terms of the agreement. The plaintiff and others are always ready and willing to execute and receive the sale deed as per the said agreement on or before 26.02.2005. Since the 8th defendant did not pay the balance sale consideration as agreed, the general power of attorney dated 12.01.2005 was revoked on 21.11.2005.



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3.3. Subsequent to the death of the plaintiff's parents, disputes arose between the plaintiff, his brother and sisters, who are the defendants 1 to 7, and a partition suit was filed for the relief of mandatory injunction. It was also sought to direct the 8th defendant to hand over the original documents collected by him from M/s.Park Town Benefit Fund Ltd. In the suit in CS.No.253/2012, the 8th defendant got the summons in the year 2012 itself, and he filed his written statement on 05.02.2020 along with a counter-claim. The written statement filed by the 8th defendant was ordered to be received by condoning the delay of 2766 days. So the relief of specific performance claimed by the 8th defendant in his counter claim is barred by limitation.

4. The learned counsel for the 8th defendant submitted that the 8th defendant is one of the directors of Rainbow Foundations Ltd, in whose favour the sale agreement dated 12.01.2005 was executed and he was ready and willing to perform his part of the contract in accordance with the sale agreement dated 12.01.2005; the issue of limitation is a mixed question of law and facts and hence, it has to be decided only at the stage of trial and not at this stage; the counter-claim would disclose a valid cause of action to



sustain the same, and hence the petition should be dismissed.

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5. The 8th defendant is a company by the name Rainbow Foundations Ltd., and it is represented by its director. In the counter-claim, it is stated that there is a sale agreement between the 8th defendant, the plaintiff, his parents, and the defendants 1 to 7 dated 12.01.2005. This fact was not denied by the plaintiff also. The sale price agreed upon by the parties was Rs.2,05,50,000/-. On the day of the sale agreement itself, the 8th defendant had paid a sum of Rs.45,00,000/- as earnest money. The time for executing the sale deed was agreed at six months.

6. It is submitted by the 8th defendant that he had made various payments on different dates, but the plaintiff, his parents, and other siblings who are parties to the sale agreement did not come forward to execute the sale deed. It is submitted by the learned counsel for the 8th defendant that though the time for completing the sale deed is agreed to be six months, time is not the essence of contract. It is further submitted that the 8th defendant was ready and willing to perform his part of the contract, but only due to failure on the part of the plaintiff, the sale could not be completed.



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7. The categorical submission of the applicant/plaintiff is that the suit is hopelessly barred by limitation in view of Article 54 of the Limitation Act. Article 54 of the Limitation Act prescribes a three-year limitation period for relief of specific performance, and the three-year limitation would start running from the date fixed for performance or, if no such date is fixed, when the plaintiff is notified that the performance is refused. In the case at hand, the sale agreement was entered into on 12.01.2005 and the time for completing the sale agreement was agreed at six months. So the sale ought to have been completed on or before 12.07.2005. And the limitation would start running from 12.07.2005 and expire on 11.07.2008. However, it is claimed by the respondent/8th defendant that the counter-claim is not barred by the law of limitation.

8. In respect of the applicant's contention that the suit is barred by limitation, the learned counsel for the applicant/plaintiff cited the decision of this Court rendered in **2020(1)CTC 38 [K.Murali Vs. M.Mohamed Shaffir]**. In the said case, the Hon'ble Division Bench of this Court, after having



considered the various judgements of the Hon'ble Supreme Court, has held that if anyone enters a meaningful claim and it is found that the claim is vexatious, meritless, or barred by law, the claim should be rejected at the threshold stage itself.

9. The pleadings of the 8th defendant would show that the defendants have been demanding performance of the contract on various dates, but the plaintiff and others have evaded to do the same. Apart from the relief of specific performance, the 8th defendant has also claimed the relief of declaration that he has a valid equitable charge over the property and hand over the title deeds in respect of the schedule properties as well as the relief of an injunction.

10. So far as the relief of declaration is concerned, the period of limitation would start from the day when the right to sue first accrues. It is to be noted that, as per Article 58 of the Limitation Act, the limitation would start running not from the date when the right to sue accrues but from the date when the right to sue first accrues.



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11. Even as per the counter claim, the payments towards the previous loans and as advances have been made by the 8th defendant on or before June-2005. It can be well within the knowledge of the 8th defendant, that the plaintiff and others had evaded to execute the sale deed even after the various payments have been made by him. Hence the right to sue would accrue to the 8th defendant for the relief of declaration on the date when the right to sue first accrues. By way of seeking a relief of declaration, the 8th defendant has claimed equitable charge over the property on the strength of the sale agreement dated 12.01.2005. When the plaintiff's right to file a suit for specific performance itself is barred by limitation, the relief of declaration seeking the equitable charge over the suit schedule property on the basis of the very same agreement would also get barred by its limitation. When the counter-claim on the face of it is barred by limitation, it is difficult to countenance the arguments advanced by the learned counsel for the respondent / 8th defendant that the issue of limitation should be decided at the time of trial and it is a mixed question of law and facts.



12.The learned counsel for the respondent/8th defendant submitted the following decisions in support of his contention:

1.(1987) 3 Supreme Court Cases 265 [Mahendra Kumar and another Vs. State of Madhya Pradesh and others,

2.(2020) 2 Supreme Court Cases 394 [Ashok Kumar Kalra Vs. Wing CDR.Surendra Agnihotri]

3.AIR 2016 Supreme Court 1304 [Vijay Prakash Jarath Vs. Tej Prakash Jarath]

4.(1996)4 Supreme Court Cases 699 [Jag Mohan Chawla and Another Vs. Dera Radha Swami Satsang and others] and

5.AIR 2014 Madras 178 [Dr.K.Rajasekaran Vs. M.Rajeswari]

13. All the above judgements would only state that the written statement can be filed along with a counter-claim. In fact, there is no dispute that the written statement should not be filed along with the counter-claim. But the question is whether the relief sought by the 8th defendant by way of his counter claim is not barred by limitation.

14. It is alleged by the 8th defendant in his counter claim that the cause of action had arisen during various dates when the defendants



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demanding the plaintiff's performance of the contract. The 8th defendant did not make any payments after the year 2005 towards the sale agreement and there is no document produced to show that he called upon the plaintiff and others to execute the sale deed after receiving the full sale consideration and at those times, the plaintiff and others had refused to execute the sale agreement. Hence, the limitation would run from the day when the plaintiff and defendants 1 to 7 and others refused to execute the sale deed.

15. In fact the suit itself has been filed in 2012 and in which the 8th defendant has filed the counter claim only on 06.02.2020. Even for any extraneous reasons if it is presumed that the 8th defendant came to know about the refusal of performance of the contract only at the time when the suit was filed, the 8th defendant ought to have filed the counter claim at least within three years from the date of filing of the plaints.

16. But the counter-claim has only been filed on 06.02.2020 which is nearly 8 years from the date of filing of the suit. So the 8th defendant has filed the counter-claim in his written statement only as an afterthought, and



that too after the claim of the 8th defendant is barred by limitation. Even though the 8th defendant has the right to file a written statement denying the relief sought by the plaintiff, the counter claim filed by the 8th defendant along with his written statement should be shown to be within the period of limitation.

17. In fact, there are no pleadings in the counter-claim about how the suit filed for specific performance and other reliefs are saved by limitation. Since the counter-claim on the face of it is barred by limitation, the matter does not require any further analysis on this ground. Since the counter claim has been filed beyond the period of limitation, the applicant/ plaintiff is able to establish one of the circumstances contemplated under Order VII Rule 11(d) CPC. Hence the counter-claim is liable to be rejected.

In the result the Application is **allowed**. The counter claim is filed by the 8th defendant along with the Written Statement in C.S.No.253 of 2012 is rejected.

27.04.2023



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R.N.MANJULA, J.

jrs

Index : Yes
Internet : Yes
Speaking: Yes
Neutral: Yes

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