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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 24th April, 2023*

+ C.R.P. 96/2023

MAHARISHI PUBLIC SR. SEC. SCHOOL Petitioner

Through: Mr. Anand Mishra, Ms. Vandita
Nain and Ms. Ayushi Rajput, Advocates

versus

M/S D. S. DIGITAL PRIVATE LIMITED Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.M. APPL. 20135/2023 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

C.R.P. 96/2023 & C.M. APPL. 20134/2023 (stay)

3. This revision petition is directed against the order of the Trial Court dated 14.02.2023, whereby the Trial Court has rejected the application of the Petitioner under Order VII Rule 11 CPC. Petitioner herein is the Defendant before the Trial Court and Respondent is the Plaintiff and parties are referred hereinafter by their litigating status before the Trial Court.

4. To encapsulate the facts, Plaintiff is in the business of providing contents to educational institutions and approached the Defendant for providing services to implement interactive learning solutions at the Schools at Gurugram, Haryana. Defendant issued a purchase order in February, 2013, which was followed by a formal agreement and the

Plaintiff delivered the hardware at the School premises on 21.02.2013

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for training purposes. Plaintiff provided training to the staff of the School for implementation of the interactive learning solutions. On the asking of the Plaintiff, Defendant hired expert teachers and incurred costs on their salaries.

5. Plaintiff instituted a suit being CSS CJ No.902/2018 against the Defendant on 23.07.2018 for recovery of Rs.1,88,000/- with respect to the services provided to the Defendant. On receipt of summons, Defendant filed its written statement on 05.11.2018 and denied the claims of the Plaintiff. Defendant also filed an application under Order VII Rule 11 CPC, to which a reply was filed by the Plaintiff.

6. In the application filed under Order VII Rule 11 CPC, Defendant raised three grounds for rejection of plaint: (a) plaint did not disclose any cause of action; (b) Trial Court had no territorial jurisdiction; and (c) suit is barred by limitation.

7. The application was dismissed by the Trial Court, against which the Defendant initially filed a petition under Article 227 of the Constitution of India being CM(M) No.637/2023, which was dismissed as withdrawn on 20.04.2023, with liberty to the Defendant to take recourse to appropriate proceedings.

8. It needs to be mentioned at the outset that the Trial Court has noted in the impugned order that the case of the Defendant for rejection of plaint was that Plaintiff has admitted that purchase order dated 10.02.2013 had expired due to afflux of time; Plaintiff has not produced any document to prove that the Defendant paid Rs.12,000/- twice and that the last payment was made on 04.04.2016 in order to bring its case within limitation. Going by these arguments, the Trial Court notes that purchase order dated 10.02.2013 shows that a contract for five years was placed by the Defendant on the Plaintiff and Defendant had agreed that Plaintiff would provide services till

February, 2018 and therefore, the suit filed on 24.07.2018 was *prima facie* within limitation. The Trial Court thereafter holds that whether or not the purchase agreement had expired due to efflux of time would be a matter of trial, as limitation is a mixed question of law and facts and the issue on limitation had already been framed. Insofar as the objection to the territorial jurisdiction is concerned, according to the Trial Court, the plaint reflected that the purchase order was signed and given to the Defendant in Delhi; invoices were also raised in Delhi and payments were received by the Plaintiff in its Bank located at Delhi and therefore, from a reading of the plaint, the same could not be rejected on the ground of lack of territorial jurisdiction.

9. Learned counsel for the Defendant, assailing the impugned order, argues that the suit being barred by limitation cannot continue and Trial Court erred in not rejecting the plaint at the threshold. He further argues that once the Court lacks the territorial jurisdiction since the Defendant is situated outside the territory of the Trial Court and no part of cause of action has arisen within its jurisdiction, there was no reason for the Trial Court to dismiss the application for rejection of plaint. According to the Defendant, the Plaintiff has made an attempt to bring the suit within the period of limitation by alleging that the Defendant had paid Rs.12,000/- to the Plaintiff twice and the last payment was made on 04.04.2016 and therefore, the suit was within limitation, however, these facts are incorrect and no document has been produced by the Plaintiff in support of the second payment of Rs.12,000/- allegedly paid on 04.04.2016.

10. The law on deciding an application under Order VII Rule 11 CPC is more than well settled. At this stage, the Court is required to examine the plaint on a mere demurer and the documents annexed thereto. The Court cannot look into the defence set up in the written

statement or decide disputed questions of fact. This has been so held by the Supreme Court in *Church of Christ Charitable Trust and Educational Charitable Society Represented by its Chairman v. Ponniamman Educational Trust*, (2012) 8 SCC 706 and *Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives and Others*, (2020) 7 SCC 366. Courts have repeatedly held that rejection of a plaint under Order VII Rule 11 CPC is a serious matter and while deciding an application, the Courts must be conscious that the case set up by the Defendant is of such a threshold that from a mere reading of the plaint, it appears that the case of the Plaintiff is completely frivolous, vexatious and meritless.

11. Before proceeding further, it is pertinent to refer to the averments made by the Defendant in the application under Order VII Rule 11 CPC. A bare perusal of the application shows that it is extremely vague, sketchy and lacks even the minimum necessary details to make out a case for rejection of plaint on any of the three grounds which are sought to be urged and beyond a doubt has been filed callously without any seriousness attached to it. Relevant paras of the application are extracted hereunder for ready reference:-

“5. That the suit of the plaintiff is also liable to be rejected because the plaintiff has not complied with the requirement of Order VII Rule 1 CPC, as the plaintiff miserably failed to describe the cause of action in filing of the present suit. Moreover, there is no cause faction in the present suit in favour of plaintiff and against the answering defendant.

6. That the plaintiff has no title, right or interest to file the present suit because the plaintiff is not entitled to any amount as claimed for.

7. That no cause of action ever accrued to the plaintiff to file the present suit, hence without cause of action suit of the plaintiff is liable to be dismissed.

8. That while filing the present suit, the plaintiff has concealed the true and material facts from the Hon'ble Court. The true and material facts are that the defendant had hired the service of plaintiff for setting-up and to implement interactive learning solutions at its

school but in this regard no agreement was executed between plaintiff and defendant. As per discussion between plaintiff and defendant, the plaintiff have only sent stuff /material for installing the Projector System at the defendant school while installing that stuff and letting defendant's student serve by defendants and also had to give their services to the defendant but the plaintiff did not provide any services which caused the plaintiff to face financial loss approximately of Rs.3,00,000/-. The plaintiff gave mandate to the defendant that the defendant requires expert teacher having specialization in the Projector System, believing upon the assurance and representation of the plaintiff the defendant had to hire expert teacher for the said purpose and the defendant had given them salary for an year but no projector has yet been installed by the plaintiff at defendant's school, due to which the defendant has not only faced a loss of Rs.3,00,000/but has also faced loss to its reputation and image, which tarnished only due to the plaintiff's act. It is submitted that when Plaintiff Company did not install any projector in the defendant school then question of paying any amount thereof does not arise at. However, it is submitted that stuff/material bring brought by the plaintiff is still lying in defendant school."

12. From a perusal of the application, it is clear that the averments are vague and no grounds have been set up for rejection of the plaint except for merely stating that no cause of action has arisen in favour of the Plaintiff. In fact, the plea of limitation is not even taken in the application and on this ground alone the application deserved to be dismissed. An attempt has been made by the Defendant to argue beyond the pleadings in the application which is reflected from the impugned order, which though was impermissible, yet the Trial Court has considered the submissions and rejected the same.

13. On the contrary, perusal of the plaint shows that the Plaintiff has given details of how a purchase order was placed by the Defendant and has also annexed a copy with the plaint. It is averred that Plaintiff delivered and installed all the hardware as required and mentioned in the purchase order and also provided training to the School teachers regarding use of the hardware and the software on 27.05.2018. Plaintiff has appended the original School Training

Report and Acknowledgment of the training by the School signed by

the Principal. It is stated that after installation and training, feedback was taken from the Teachers and the original feedback form signed by the Teachers is also annexed. Plaintiff has referred to various invoices indicating payment of Rs.12,000/- made by the Defendant on two occasions and annexed the invoices. Reference is also made to a legal notice sent on 29.01.2018 and its reply by the Defendant. It is clearly averred in the plaint that cause of action arose on 04.04.2016 when some payment was made by the Defendant and also that the purchase order dated February, 2013 was valid for five years and therefore, the suit was within limitation. In para 15 of the plaint, Plaintiff has mentioned that purchase order was signed at Delhi, the hardware was dispatched from Delhi, invoices were raised from the Delhi office, all payments were received in the Bank accounts of the Plaintiff company in Delhi and the registered office of the Plaintiff is in Delhi where some ledgers are maintained.

14. Therefore, from a plain reading of the plaint on a mere demurer, it is evident that the Plaintiff has mentioned crucial facts necessary to *prima facie* establish that the suit was within limitation and the Court has territorial jurisdiction, most importantly, that the purchase order was placed in February, 2013 and was valid for five years. The purchase order was not merely for delivery and installation of hardware but was also for providing training to the School Teachers, which the Plaintiff continued to do up to 2018. Letters evidencing installation of hardware along with delivery challans and invoices are also on record. It is equally true that limitation is a mixed question of law and fact and in this case, as noted by the Trial Court, an issue on limitation has already been framed. At this stage, there are enough averments in the plaint accompanied by documents which lead to an inevitable conclusion that the stand of the Defendant that the

plaint deserves rejection at the threshold is wholly fallacious and misconceived.

15. Accordingly, there is no merit in the revision petition and the same is dismissed along with the pending application, making it clear that the observations in this judgment are only for the purpose of disposing of this revision petition and will have no bearing on further adjudication of the suit.

APRIL 24, 2023/kks

JYOTI SINGH, J

