



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

% **Date of order: 12th September, 2023**

+ C.R.P. 143/2023 & CM APPL. 28982/2023

MUKESH KUMAR

..... Petitioner

Through: Mr. Paritosh Singh Rajput, Advocate
along with petitioner in person

versus

SUNITA GUPTA

..... Respondent

Through: Mr. V. K. Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The revision petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter "CPC") has been filed on behalf of the petitioner seeking the following reliefs:

"a) be pleased to set aside the Order dated 23.02.2023, as passed by Sh. Arun Goel, Hon'ble Additional District Judge-03, Shahdara District, Karkardooma Courts, Delhi in CS. No. 374 of 2018 titled as "Sunita Gupta Vs. Mukesh Kumar";

b) be pleased to dismiss the suit CS. No. 374 of 2018 titled as "Sunita Gupta Vs. Mukesh Kumar" pending in the Court of Sh. Arun Goel, Hon'ble Additional District Judge-03, Shahdara District, Karkardooma Courts, Delhi;

c) be pleased to grant any other or further relief, which this Hon'ble Court may deem fit and proper under the circumstances of the petition in favour of the Revisionist."

2. The factual matrix of the case is recapitulated herein below:

a) The petitioner i.e., the defendant before the learned Trial Court



had purchased some goods on credit from the respondent i.e., the plaintiff before the learned Trial Court. In consequence to the said purchase, certain invoices were raised in the name of the petitioner by the respondent.

- b) Upon failure of the petitioner to make payments against certain invoices, the respondent i.e., the plaintiff, filed a Suit seeking recovery of Rs. 30,38,753/-, against the petitioner. Thereafter, the petitioner moved an application under Order VII Rule 11 of the CPC, thereby, seeking rejection of the plaint of the respondent on the ground of limitation.
- c) However, the said application was dismissed *vide* the impugned order dated 23rd February 2023, passed by the learned Additional District Judge-03, Shahdara District, Karkardooma Courts, Delhi in Civil Suit bearing CS. No. 374/2018.
- d) Being aggrieved by the above stated impugned order, the petitioner has invoked the revisional jurisdiction of this Court by way of the instant civil revision petition.

3. Learned Counsel appearing on behalf of the petitioner submitted that the learned Trial Court had failed to take into consideration the entirety of facts and circumstances of the instant dispute.

4. It is submitted that the Suit filed by the respondent is not maintainable and is liable to be dismissed, since the same is barred by the limitation. The Limitation Act, 1963, prescribes that a suit for recovery has to be filed within a period of 3 years from the date of the last cause of action.



5. It is submitted that the respondent in her Suit has concealed material facts. The respondent ought to have computed the limitation period from the date of delivery of goods or from the date of expiry of the period of credit which accrues the cause of action in her favour, instead the limitation period computed by the respondent commences from the date of last of payment made by the petitioner in the favour of the respondent. The said calculation of limitation period is contrary to the settled law.

6. It is submitted that the respondent in her Suit has wrongly claimed the account to be a running account, thereby, illegally calculating the principle amount and subsequently the limitation period which certainly bars the respondent from instituting her Suit.

7. It is submitted that upon a bare perusal of the various invoices annexed to the plaint, it is evident that till 13th April 2015, the petitioner made all payments to the respondent on invoice to invoice basis, and no interest was ever charged thereupon. Hence, the respondent cannot claim the status of the account of the petitioner to be that of a running account. The details of the said invoices has been reproduced below:

Invoice No.	Date of sale	Date of payment	Amount Due	Amount Paid	Interest Paid/ Charged
557	17.01.2015	24.03.2015	185258	185258	0
558	28.01.2015	24.03.2015	47880	47880	0
563	08.02.2015	24.03.2015	176400	176400	0
566	25.02.2015	27.04.2015	172867	172867	0
567	28.02.2015	27.04.2015	148716	148716	0
572	05.03.2015	20.04.2015	153261	153261	0
573	06.03.2015	15.04.2015	138348	138348	0
574	09.03.2015	18.04.2015	204120	204120	0
575	12.03.2015	22.04.2015	105161	105161	0
576	14.03.2015	13.04.2015	151200	151200	0

8. It is submitted that the claim of the respondent is bogus and for the



said reason, details of invoices, amounts due, credit period etc. were *malafidely* not disclosed in the plaint.

9. It is further submitted that since there was no running account, no mutuality and no reciprocal demands, accordingly, the finding of the learned Trial Court with respect to applicability of Article 1 of the Limitation Act, 1963, for the purposes of computing the period of limitation, thereby, holding the petitioner's account to be a running account, is fallacious on the face of it.

10. It is submitted that upon perusal of the invoices enclosed by the respondent along with the plaint further reveals that all the invoices mention a fixed period of credit for making payment, therefore, the instant dispute cannot be stated to fall within the ambit of Article 1 of the Limitation Act, 1963.

11. It is submitted that the learned Trial Court erred in holding that only the plaint filed by the respondent is germane for deciding the petitioner's application under Order VII Rule 11 of the CPC. The learned Court below ought to have considered the documents annexed to the plaint, upon perusal of which it is evident that the Suit is barred by the limitation.

12. It is submitted that a Coordinate bench of Court in the judgment passed in the case titled as ***Naveen Kumar v. Meenakshi Goyal, 2021: DHC:1012***, has held that the Court while deciding an application under Order VII Rule 11 of the CPC, the Trial Court is competent to look into the documents annexed with the plaint. Therefore, the practice of the Learned Trial Court in the instant case by limiting itself to contents of plaints only is



erroneous and liable to be set aside.

13. It is submitted that in view of the foregoing paragraphs, the instant petition may be allowed and the impugned order be set aside.

14. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the instant petition and submitted during the course of arguments that the learned Trial Court did not commit any error while deciding the application for rejection of the plaint.

15. It is submitted that this Court has a very limited scope under the revisional jurisdiction for interfering with the impugned order dated 23rd February 2023. There are no adequate reasons placed before this Court by the petitioner that calls for interference with the impugned order. Therefore, the instant petition, being devoid of any merits, is liable to be dismissed.

16. Heard learned counsel for the petitioner and perused the entire material on record.

17. Before delving into the issue at hand, it is prudent to discuss the settled legal principles pertaining to Order VII Rule 11 of CPC.

18. The law in respect of Order VII Rule 11 of the CPC has been well settled, the Hon'ble Supreme Court in *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467, has held that if on a meaningful and informal reading of the plaint, the averments are manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 of the CPC.

19. In the judgment of *Kamala v. K.T. Eshwara Sa*, (2008) 12 SCC 661, the Hon'ble Supreme Court held that the issues on merits of the matter



which may arise between the parties would not be within the realm of the Court at the stage of application under Order VII Rule 11 of the CPC. Further, all the issues *qua* the suit, need not to be decided under an application for rejection of the plaint.

20. Further, in the matter of ***Prem Kishore & Ors. V. Brahm Prakash & Ors., 2023 SCC OnLine SC 356***, the Hon'ble Supreme Court has reaffirmed the scope of clause (d) of the Order VII Rule 11 of the CPC, under which the ground of the limitation, raised by the petitioner falls. The Hon'ble Court in the said judgment held as under:

“25. Order 7 Rule 11(d) of CPC provides that the plaint shall be rejected “where the suit appears from the statement in the plaint to be barred by any law”. Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Court while deciding such an application must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case...”

21. On a bare perusal of the abovementioned judgments, for rejection of a plaint, it can be inferred that insofar as the application under Order VII Rule 11 of the CPC, is concerned, the relevant facts which need to be looked into for adjudicating upon an application thereunder are the averments made in the plaint. The Trial Court can exercise the power under Order VII Rule 11 of the CPC, at any stage of the suit but before the conclusion of the trial.

22. The learned Trial Court while passing the impugned order dated 23rd



February 2023, observed and held as under:

“5. It is well settled law that in case of application u/o 7 rule 11 CPC, the court has to see averments made in the plaint and cannot look at the WS filed by the defendant.

6. The plaintiff in the present case has claimed that good were supplied to the defendant and invoices were raised and payment was made by the defendant against the said invoices. There was running account between the parties and plaintiff has also filed on record the statement of running account which shows that invoices were raised and payment were made by the defendant subsequently a last payment was made on 09.12.2016. The article 1 of the Limitation Act provides that in case of a mutual open and current account between the parties limitation starts from the close of accounting year. The last payment is made on 09.12.2016.

7. The limitation in that case will start from 01.04.2017. The present suit has been filed on 19.04.2018 i.e. within the period of limitation. The present application has been filed on behalf of defendant for the purpose of delay.”

23. Upon a bare perusal of the impugned order, it is observed that the learned Trial Court had dismissed the petitioner's application for rejection of the plaint as it found that the issues raised by the petitioner with regard to the limitation period are not substantial. The learned Court below arrived at such conclusion since it observed that the petitioner had made the last payment to the respondent on 9th December 2016. It further observed that the account of the petitioner is a running account falls within the purview of Article 1 of the Limitation Act 1963, and keeping in mind the date of the last payment, the limitation period for instituting the instant Suit will start from 1st April 2017. Therefore, the suit being filed on 19th April 2018, is within the limitation



period and hence, the application under Order VII Rule 11 of the CPC, for rejection of the respondent's plaint was dismissed.

24. At this juncture, this Court deems it fit to delve into the aspect of law governing the extent and scope of Article 1 of the Limitation Act, 1963. The said provision is reproduced below:

Description of suit	Period of limitation	Time from which period begins to run
1. "For the balance due on a mutual, open and current account, where there has been reciprocal demands between the parties.	Three years.	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account."

25. Upon examination of the provision mentioned above, it is noted that the period of limitation for a plaintiff to file a suit in case of recovery in a mutual, open and current account, provided there are reciprocal demands between the plaintiff and the defendant, is three years. The said provision further states that the time period from which the limitation period will begin in such cases, is the date of the closing of the year in which the last item was bought was either admitted or proved in the account.

26. In the instant case, considering the *Annexure R-4*, appended to the instant petition, it is explicit that there was a running account between the parties in which there were invoices being raised and subsequently payments being made by the petitioner. The statement of account placed on record



further states that the business transactions between the parties were going on and the petitioner was not paying the amount due towards the purchased goods on invoice to invoice basis. Also, the last payment on record is of 9th December 2016.

27. Thus, in consonance with Article 1 read with Section 12 of the Limitation Act 1963, and in view of the admitted fact that the last payment by the petitioner was made on 9th December 2016, the limitation period is to be started from 1st April 2017. The instant Suit being filed on 19th April 2018, is within the limitation period as the same was filed before the expiry of the limitation period. Hence, the view taken by the learned Trial Court is correct and is hereby, being upheld.

28. Upon appreciating the prevailing position of law, the contentions of the parties and the averments made in the plaint, this Court is of the view that the view taken by the learned Trial Court is not erroneous. This Court is also of the view that it is a settled position of law that for rejection of a plaint, what is relevant for answering the matter in issue in the context of the application under Order VII Rule 11 of the CPC, is the examination of the averments made in the plaint. The plaint is required to be treated and 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 made under Order VII Rule 11 of the CPC.

29. At this juncture, it is also relevant to consider the limited scope of Section 115 of the CPC, under which the instant petition has been filed. Relying upon the judgment of *D.L.F. Housing & Construction Co. (P) Ltd.*



v. Sarup Singh, (1969) 3 SCC 807 which has been reaffirmed in *Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd.*, (2022) 8 SCC 633, this Court is of the view that the High Court shall not interfere merely, because the Court below has wrongly decided a particular application in a suit but may interfere if the Court below has exercised its jurisdiction illegally or if there is found to be a material irregularity in the exercise of jurisdiction by the Trial Court.

30. The ratio, as observed in the judgments by the Hon'ble Supreme Court, by way of which, this Court finds that not every order of the Trial Court can be regarded as an order that can be put under the ambit of revisional jurisdiction of the High Court. This Court has powers which can be exercised under Section 115 of the CPC, to set aside any order only if that order suffers from an error of jurisdiction. The said error of jurisdiction includes the irregular exercise, or non-exercise of it, or the illegal assumption of it.

31. In view of the above, it is clear that the Court exercising revisional powers shall not enter into the question of facts or evidence or any errors thereto, but shall limit itself to the question of errors of exercise of jurisdiction.

32. Considering the facts and circumstances of the case in hand, it is held that the learned Trial Court has correctly passed the impugned order by stating that the grounds raised by the petitioner in his application under Order VII Rule 11 of the CPC is without any merit, since the suit is within the period of limitation. The impugned order of the learned Trial Court,



thereby, being upheld.

33. There is nothing in the impugned order which suggests that there is any error of jurisdiction or other error which goes to the root of the matter, thereby calling for the intervention of this Court under Section 115 of the CPC.

34. In view of the above discussion of facts and law, this Court finds no infirmity in the impugned Order dated 23rd February 2023, passed by the learned Additional District Judge-03, Shahdara District, Karkardooma Courts, Delhi in Civil Suit bearing CS. No. 374/2018.

35. For all the aforesaid reasons, no merit is found in this revision petition and the same is accordingly dismissed along with the pending applications, if any.

36. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 12, 2023

gs/ryp/db

Click here to check corrigendum, if any