2024:DHC:8625

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Date of decision:04th November, 2024***

\+ **C.R.P. 66/2020**

VIGYAPAN LOKE DELHI ADVERTISING C.G.H.S. LTD

.....Petitioner

Through: Mr. G.L. Verma, Advocate.

versus

WAZIR HUSSAIN (SINCE DECEASED THR LRS)

.....Respondent

Through: Appearance not given.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

1. A Revision Petition under Section 115 of *Code of Civil Procedure, 1908* ('CPC' *hereinafter*) has been filed against the Impugned Order dated 06.01.2020 *vide* which the Application under Order VII Rule 11 CPC filed by the petitioner *(defendant in the Suit*), has been dismissed.

2. The Petitioner had filed an Application under Order VII Rule 11 CPC seeking rejection of the Suit, wherein the following grounds were taken :

(i) the Plaintiff (Respondent) has not approached the Court with clean hands;

(ii) the Plaintiff has failed to disclose the remarks made by High Court of Uttrakhand at Nainital wherein it was observed "For the reasons recorded above, this Court is of the opinion that both the complaints are mischievous acts of the complainant Wazir

Hussain at the behest of previous Secretary of the Society Mr. Mahesh Belwal…"

(iii) that the Plaintiff's Suit is barred by limitation. It was filed in July, 2014 while the in paragraph 8 of the plaint the cause of action is stated to have arisen in the year 2012;

(iv) the plaint does not disclose any cause of action;

(v) that no Legal Notice was issued before the filing of the Suit;

(vi) that this court has no territorial jurisdiction to entertain the present Suit;

(vii) that earlier a Suit was filed in District Court, Kashipur, where it was dismissed by the High Court at Nainital by observing that "the complaint had been filed by the Respondent Wazir Hussain in Nainital with an ulterior motive only to cause harassment to the present office bearers of the Society at the behest of Mahesh Belwal"; and

(viii) that the present Suit is not maintainable because of multiple frauds and embezzlement done by the Plaintiff.

3. The Application was contested by the Plaintiff, who denied all the averments.

4. The learned Trial Court in its Impugned Order dated 06.01.2020, observed that *"the Balance Sheets of the petitioner/defendant revealed that the Statement of Account relied upon by the Plaintiff reflected the outstanding amount and the claim that the bills were bogus or fraudulent or there were ghost entries made in the Statement of Account, were all matter of evidence."* Reliance was placed on *Bhajan Singh Samra vs. M/s Wimpy International Ltd.* Co. PET.246/2006 & CA 1206/2006 and *Sobha Ltd. vs. NIHO Construction Ltd*. CS(COMM) 40/2015 decided by this Court. It was

thus, held that it could not be said that the Suit was not within limitation while considering the Application under Order VII Rule 11 CPC.

5. *Secondly*, it was held that merely because the Hon'ble Uttarakhand High Court had quashed the proceedings under *Section 138* of *Negotiable Instruments Act, 1881* ('N.I Act' *hereinafter*) by Order dated 27.02.2012, would not ipso facto lead to a conclusion that the Civil Suit is not maintainable.

6. *The Application under Order VII Rule 11 CPC was consequently rejected.*

7. Aggrieved, the presentRevision Petition has been filed on behalf of Revisionist/Defendant to challenge the Impugned Order essentially on the ground of Suit being barred by Limitation. It is asserted that the Plaintiff had filed a Suit under Order XXXVII CPC in July, 2014 for recovery of Rs.21,20,400/- along with interest 9% in respect of the transactions which pertain to the year 2000 and 2003, and is clearly barred by limitation. It is further asserted that limitation commences from the date of Invoices, Bills or Notice. In this case, neither Bill nor any Notice was served upon the Revisionist Society. The learned ADJ has failed to consider the case of "*Micrographics India vs. The Govt. of NCT Delhi*" in RFA No.320/2018, wherein it has been re-iterated that "*Limitation would definitely commence from the date of Invoices*".

8. Furthermore, the Plaintiff has failed to file the original documents despite specific directions of the Court. Moreover, there were no *bona fide* Contract nor any consideration value was mentioned in the bogus documents. The alleged Work Contract is a false and fabricated document. The then Secretary of the Society had colluded with the Plaintiff for illegal

financial benefit. The Suit also does not mention the date of completion of work. All the bills attached with Suit are only Running Account bills without having any acknowledgments or receipt. Even the copies of the cheques, bear cuttings in dates leading to difference of two/two and half years from the original date.

9. The learned ADJ also failed to consider that the then Secretary Mr. Mahesh Belwal, had forfeited his right to be even the member of the Society on the date when the cheques were issued i.e. 20.11.2003 as he had already sold his Flat No.244 to Mr. Ajit Kesari on 26.05.2003. According to Section 91 of *Delhi Cooperative Societies Act, 2003* ('DCS Act' *hereinafter*), a person ceases to be a 'member' automatically after he sells his flat in the Society. Therefore, Mr. Mahesh Belwal had no competence to issue the cheques on 20.11.2003 after having sold his flat on 26.05.2003. The act of issuing the cheques was void *ab-initio* and contrary to law. The judgments relied upon by the Plaintiff were distinguishable on facts.

10. Moreover, the Balance Sheets mention nothing about any liability due from the defendant/Respondents. Yet the Impugned Order has been passed on the grounds which do not exist on record. The documents filed by the Plaintiff are fabricated, bogus and without verification, acknowledgement and any authenticity. The Balance Sheet do not make any mention of the amount so claimed. It is, therefore, submitted that the Impugned Order be set aside and the Suit of the Plaintiff be dismissed.

11. **Submissions heard**.

12. For a comprehensive appreciation of the facts agitated in the Application under Order VII Rule 11 CPC, it would be pertinent to refer to the Suit filed by the Plaintiff for recovery of Rs.21,20,400/- along with

interest from the defendant Cooperative Group Housing Society Ltd./the petitioner. According to the facts as narrated in the Suit, the defendant/petitioner is a Cooperative Group Housing Society which constructed a multi-storey building in the name of Vigyapan Lok at 15, Mayur Vihar, Phase-I Extension, for its members. The defendant Society placed several Works Contracts on the Plaintiff on the terms and conditions contained in the Civil Works Contract bearing No.GHS/(MB)/2000 dated 10.02.2000. The Plaintiff carried out the work and submitted the Bills of various amounts between 01.03.2000 till 05.12.2001 and again on 28.01.2003 leaving a balance of Rs.12,11,875/- payable to the Plaintiff.

13. In discharge of these liabilities, the defendant Society issued 6 cheques totaling to Rs.11,16,000/-, this amount is also reflected by the defendant in the Balance Sheet for the period 01.04.2004 to 31.08.2005. The said amount of Rs.11,16,000/- forms part of a larger amount of Rs. 20,17,086/-(Cr.) shown under the 'Assets' head under the State Bank of India column. Another sum of Rs.1,62,375/- (Credit) is shown under State Bank of India, Defence Colony Branch and Cash in Hand Rs.327/- (Debit) which totals to Rs.21,79,134/-. The Assets column showing this amount, clearly implies that the defendant has issued cheques worth Rs.20,17,086/- from State Bank of India, Daryaganj and cheque worth Rs.1,62,375/- from State Bank of India, Defence Colony Branch which have still not been presented. In the Balance Sheet as on 31.03.2005, it is reflected that Rs.11,16,000/- are due and payable by the defendant to the Plaintiff. Moreover, an amount of Rs.21,79,134/- has been carried forward by the defendants in its Balance Sheets every year up to the financial year 2012-13 under the head "*Balance pertaining to 2004-05*". Therefore, from the

accounts maintained by the defendant, it is evident that the amount of Rs.11,16,000/- is due till 31.03.2013.

14. The Plaintiff also filed a *Complaint under Section 138 of N.I. Act* in respect of the cheques which had bounced. The learned Magistrate, Kashipur had summoned the defendant, but the High Court of Uttrakhand at Nainital quashed the complaints by its Order dated 27.07.2012. The SLP was also dismissed by the Supreme Court on 10.12.2012.

15. It was further asserted that the *cause of action* arose on numerous dates in 2000-01. It again arose on 31.03.2005 when a sum of Rs.11,16,000/- was reflected as payable to the defendant in its Balance Sheet. The cause of action further arose on 15.06.2005 and 20.06.2005 when the six cheques were issued in favour of the Plaintiff. The cause of action has again arisen every year when the amount due has been reflected in the subsequent Balance Sheets and particularly as on 31.03.2013. The Plaintiff thus, filed a Suit for recovery of Rs.11,16,000/- along with interest @ 9% per annum from 28.01.2003 and also *pendent lite* and future interest @ 9% per annum from the date of filing of the Suit.

16. The *main issue* raised in the Application under Order VII Rule 11 CPC was that the Suit of the Plaintiff was based on cause of action which allegedly arose in 2001, 2002 and again in 2003 when the cheques for the claimed amount were issued. The Suit has been filed in July, 2014 i.e. after about 11 years and is patently barred by limitation.

17. The learned counsel on behalf of the Plaintiff/Respondent has not denied that the Works and the Running Bills pertained to the year 2001-02. However, has relied on the cheques that were issued in the year 2003 for an amount totally to Rs.11,16,000/-. It is not in dispute that in respect of these

six cheques, the Complaint under Section 138 of N.I. Act were filed before the Magistrate, Kashipur, but these complaint under Section 138 of N.I. Act were quashed by the High Court of Uttarakhand at Nainital vide its Order dated 27.07.2012.

18. The Plaintiff has sought to argue that this amount of Rs.11,16,000/- has all throughout been reflected as outstanding in the Balance Sheets of the defendant Society.

19. Admittedly, according to the Plaintiff himself, the Work Contract was awarded in the year 2000 and the running Bills were submitted during the period 2000-2001. The total outstanding amount was claimed to be Rs. 20,17,086/- . Therefore, from the averments made by the Plaintiff, the cause of action commenced in the year 2000-01. The invoices/Bills have also been submitted during that period.

20. In the case of *Micrographics India* (supra) it had been observed that the limitation would commence from the date of issue of Bills or Invoices and that date shall be the requisite date for reckoning the limitation. The bills being of 2000-2001 and the Suit having been filed in July, 2014 clearly it is beyond the period of three years and is barred by limitation, if the date of issue of Invoices/Bills is taken.

21. The *second aspect* on which extension of limitation is sought to be explained is that six cheques for the total amount of Rs.11,16,000/- were issued between 01.04.2004 to 31.08.2005 and in respect of this the complaints under Section 138 of N.I. Act were filed before the M.M., Kashipur. However, even if the said date is taken to be date on which the amounts crystallized, then too the Suit has been filed way beyond a period of three years from the date of issue of cheques. The date of issue of

cheques, therefore, can also not bring the Suit of the Plaintiff within limitation.

22. The *third aspect* which is agitated is that the amount due to the Plaintiff has been regularly reflected in the Balance Sheets by the defendant/petitioner herein. The Balance Sheet up to 31.03.2013 reflects Sundry Creditors for the year 2004-05 in the sum of Rs. 21,79,465/- from Bank of India. There may be an amount so reflected to be the assets in the State Bank of India, but in no way does it reflect that it is an amount which is due and payable to the Plaintiff by the Society.

23. The second document relied by the Plaintiff is the Balance Sheet up to 31.03.2005. This Balance Sheet also reflects Cash in Hand in State Bank of India totaling Rs.21,79,134/-, but again in this Balance Sheet there is no mention of the amount as due and payable to the Plaintiff by the defendant Society.

24. The next document relied upon is the Balance Reconciliation Statement of the Book/Accounts of SBI, Daryaganj of the defendant Society. It mentions that though these amounts have been debited but have not been credited, as per the Passbook. It contains a mention of the 7 cheques of various amounts.

25. The last 3 cheques being of 31.03.2005 in the name of Wazir Hussain Contractor, the Plaintiff. However, this is only a Reconciliation Statement of SBI, Daryaganj merely stating that 7 cheques were issued way back in 2003 and 2005 in the name of Wazir Hussain, Contractor, but is only making a Statement of the cheques that got issued way back in 2003 and 2005 and nowhere records any kind of acknowledgement in the balance records of the defendant Society showing that the said amount is due and

payable to the Plaintiff.

26. There is no Balance Sheet or any other document produced by the Plaintiff showing any kind of acknowledgement by the defendant Society showing that there was an outstanding amount payable to the Plaintiff, as has been claimed by him. The documents relied upon by the Plaintiff only makes a reference to the cheques issued in 2003 and 2005 on the basis of which the Complaints were filed under Section 138 N.I. Act, but had been dismissed by the High Court of Uttarakhand at Nainital. There is not a single document of any kind beyond 2005, to show any kind of acknowledgment of the dues by the defendant.

27. The Plaintiff has relied upon the case of *Micrographics India* (supra) but in the said case there was a clear reflection of debit amount due to the Plaintiff in the Balance Sheets. However, this is not so in the present case and the judgment is not applicable to the facts in hand.

28. Whatever way the case of the Plaintiff may be considered, it is evident that the cause of action arose what back in 2005, but the Suit has been filed in 2014. ***The Suit is hopelessly barred by limitation.***

29. The Impugned Order dismissing the Application under Order VII Rule 11 CPC, is hereby set aside and the Suit of the Plaintiff is rejected as barred by limitation.

30. The Revision Petition is accordingly allowed.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 4, 2024
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