



2023:DHC:7850



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 13th October, 2023**

+ **C.R.P. 292/2023**

MAHARASHTRA FEEDS PVT. LTD. & ANR. Petitioners
Through: **Mr.Raghav Saluja and Ms.Tanisha Verma, Advocates**

versus

AAKASH VARSHNEY Respondent
Through: **None**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM.APPL. 53432/2023 (Exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

C.R.P. 292/2023 and CM.APPL. 53431/2023 (Stay)

1. The present revision petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), has been filed by the petitioners seeking the following reliefs:

"i) set-aside the impugned order dated 23.08.2023 passed by Sh. Raj Kumar, Ld . ADJ, (North), Rohini Courts, Delhi in CS DJ No. 343/ 2019 titled as "Dr. Aakash Varshney Vs. Maharashtra Feeds Pvt. Ltd. & Anr." whereby the application of the revisionists under Order VII Rule 11 read with Section 151 CPC for rejection of plaint has been dismissed;



ii) allow the application of the revisionists / defendants under order VII Rule 11(d) read with Section 151 CPC and reject the suit of the respondent / plaintiff being barred by law of limitation.

iii) pass any other / further order (s), instruction (s) or direction (s), as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in favour of the T. LTD. revisionists and against the respondent."

2. The brief facts leading to the filing of the instant petition are recapitulated in brief herein:

a. Dr. Aakash Varshney/respondent had worked with the Sale & Market Department of Maharashtra Feeds Pvt. Ltd./petitioner no. 1, wherein, he served as a Trainee (Sales) since the year 2000.

b. On 13th June 2017, the respondent resigned from the above said services of the petitioner no. 1, and the resignation was duly accepted by the petitioner on 30th June 2017.

c. Subsequently, the respondent filed a civil suit bearing CS DJ No. 343/2019, before the learned Additional District Judge, for the recovery of Rs. 1,16,62,288/- against the petitioners for his dues in terms of gratuity, arrears, etc.

d. On 17th September 2019, the petitioners filed their written statement. Thereafter, the issues were framed by the learned Trial Court.

e. The petitioners on 14th July 2023, filed an application under moved an application under the provisions of Order VII Rule 11 of the CPC, for the rejection of the respondent's plaint.



f. Thereafter, considering the above application, the respondent filed its reply, whereupon, the learned Additional District Judge, dismissed the application.

g. Therefore, the petitioners being aggrieved by the impugned order dated 23rd August 2023, have filed the present revision petition challenging the abovesaid order.

3. Learned counsel appearing on behalf of the petitioners submitted that the learned Trial Court erred while not considering the plaint in accordance to the law, wherein, as per paras and significantly denotes that the respondent is claiming the dues on account of incentives (year 2011 to 2017) i.e., barred by the limitation.

4. It is submitted that the learned Trial Court failed to appreciate the fact that the alleged Original Incentive Scheme relied upon by the respondent states that the amount due in terms of incentives was to be released in October and April every year. Hence, the limitation period commences from when the said incentives were due for the first time.

5. It is further submitted that the plea of the respondent that he was under the petitioner no.1s' employment and threatened for its termination, thus, no legal action can be instituted thereto and Section 9 of the Limitation Act clearly provides that where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it.

6. Learned counsel appearing on behalf the petitioner submitted that the learned Trial Court erred in considering the settled legal principles by the



Hon'ble Supreme Court whereupon, it was held that any law bars the suit, the plaintiff cannot be permitted to call upon the matter for adjudication.

7. It is submitted that in view of the preceding paragraphs, the instant petition may be allowed and impugned order be set aside since the learned Trial Court erred in exercising its jurisdiction while deciding the petitioner's application under Order VII Rule 11 of the CPC.

8. Heard the learned counsel appearing on behalf of the petitioner and perused the material on record.

9. Order VII Rule 11 of the CPC, the provision under which the present impugned order has been passed, empower the Courts to reject a plaint, if only from the averments in the plaint, it is evident that the plaint is liable to be rejected. The basic settled legal principle behind the said provision is that if on an entire and meaningful reading of a plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11 CPC. The said legal proposition was enunciated by the Hon'ble Supreme Court in the judgment passed in *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467.

10. On perusal of the abovementioned judgments, it can be inferred that insofar as the application under Order VII Rule 11 of the CPC, is concerned, for rejection of a plaint, the relevant facts which need to be looked into for adjudicating upon an application thereunder are the averments made in the plaint.

11. It is a well- settled principle that to decide the application under Order VII Rule 11 of the CPC, wherein, the ground of limitation is taken, the same



cannot be decided as an abstract principle of law divorced from the facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. Moreover, the facts cannot be adjudicated upon at a preliminary stage and the Court has to look into pleadings, evidence of record, etc. for the same. Therefore, under Order VII rule 11, wherein the question of limitation is a mixed question of facts and law, the same cannot be adjudicated under an application for Order VII Rule 11 of the CPC.

12. The Hon'ble Supreme Court has enunciated the aforesaid principle in the judgment of ***Salim D. Agboatwala and Others v. Shamalji Oddhavji Thakkar and Others*** 2021 SCC OnLine SC 735, whereby, the following was held:

“13. As observed by this Court in P.V. Guru Raj Reddy v. P. Neeradha Reddy¹, the rejection of plaint under Order VII Rule 11 is a drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order VII Rule 11.

14. Again as pointed out by a three member bench of this Court in Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar², the plea regarding the date on which the plaintiffs gained knowledge of the essential facts, giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order VII Rule 11.”



13. Before proceeding further, this Court will briefly revisit the scope and extent of Section 115 of the CPC, which has been invoked by the petitioner in the present petition, thereby, asking this Court to exercise its revisional powers by deciding whether the learned Court below had exercised its jurisdiction illegally or irregularly.

14. It is a settled principle of law that if the erroneous decision by a subordinate Court result in exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises and, in such circumstances, the Court must exercise its revisional powers, but not otherwise. The same has been enunciated by the Hon'ble Supreme Court in the judgment of *Manindra Land and Building Corpn. v. Bhutnath Banerjee*, (1964) 3 SCR 495.

15. Further, the Hon'ble Supreme Court has reiterated the scope of Section 115 of the CPC, in *Baldevdas Shivlal v. Filmistan Distributors (India) (P) Ltd.*, (1969) 2 SCC 201, which was followed by the Hon'ble Court in *Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd.*, (2022) 8 SCC 633. It held that the said provision includes jurisdiction alone, the irregular exercise, or non-exercise of it, or the illegal assumption of it. The mere fact that the decision of the trial court is erroneous due to a question of fact or of law does not amount to illegality or material irregularity. It embarks a peculiar kind of limitation that needs to be followed in its true letter and spirit. The High Court shall not interfere merely, because the Court below has wrongly decided a particular application in a suit being not maintainable.



16. In view of the judgments mentioned above, it becomes evident that this Court has limited powers which can be exercised under Section 115 of the CPC. It is also prudent to apply the ratio observed in the judgments of the Hon'ble Supreme Court, by way of which, this Court finds that not every order of the learned Trial Court can be regarded as an order that can be put under the ambit of revisional jurisdiction of the High Court.

17. Now advertent to the facts of the present petition.

18. The case of the petitioner is that the civil suit has been filed by the respondent, for the recovery of the amount towards incentive alleged to be payable to him from 2010 till 2017. Hence, the civil suit filed by the plaintiff on 10th July 2019, is beyond the time period of 3 years and barred by the law of limitation.

19. The relevant portion of the impugned order is as follows:

"A specific issue qua all the preliminary submissions which are contained in the written statement filed by the defendant which includes the point of limitation as well, has already been framed vide orders dated 24.04.2023. Admittedly, the plaintiff was an employee of defendant no. 1. The last drawn salary was to the tune of Rs. 1.75 lacs per month. The defendants have denied the claim of the plaintiff on account of incentives etc. The plaintiff has sought for the relief of the amount to the tune of Rs. 1,10,80,709/- on account of incentive besides other reliefs of leave encashment and gratuity. Keeping in view the entirety of the facts, I have no hesitation to hold that issue of limitation in the present scenario cannot be decided without evidence and trial and since the specific issue qua the preliminary submissions of the defendant which includes the plea of limitation has already been framed by this court on 24.04.2023, I have no hesitation to hold that the application u/o



VII Rule 11 of the CPC which has been filed by the defendant after a gap of four years i.e. in the year 2023 whereas the date of institution of the present suit is of the year 2019 is without any merits and the same is hereby dismissed.”

20. A bare perusal of the above reveals that the learned Trial Court held that since, the issue of limitation is one which is a mixed question of law and fact, therefore, the plaint cannot be rejected by adjudicating upon an application made under Order VII Rule 11 of the CPC. There has to be appreciation of the evidence placed on record, the pleadings of the parties. The issue of limitation has been taken into account by the learned Trial Court and the same has been framed as one of the issues of the said civil suit.

21. Upon perusal of the contents of the plaint, it is evident that the plaint discloses in each and every paragraph certain facts which happened on certain date till the filing of the civil suit. Hence, from the bare perusal of the plaint there has been a continuous action established by the respondent.

22. In the instant case, the issue pertaining to the limitation is a mixed question of law and fact and the learned Trial Court has rightly held that the same can only be adjudicated by way of a trial and not at a preliminary stage. Accordingly, the learned Trial Court has framed it as an issue to be adjudicated by it.

23. This Court is of the view that the Courts have to exercise utmost care and caution while rejecting the plaint under Order VII Rule 11 of the CPC since, the same leads to dismissal of the suit altogether. There should be a



rejection of plaint only in those cases where the Court is of the view that the suit is *prima facie* not maintainable.

24. In light of the above, this Court does not find any force in the propositions put forth by the petitioner and, is of the view that the petitioner has failed to make out his case to seek the intervention of this Court under its revisional jurisdiction.

25. The plea of the petitioner is not maintainable and the impugned order, does not occasion a failure of justice or cause irreparable injury to the party against whom it was made.

26. In view of the above discussions of facts and law, this Court finds no infirmity in the impugned order dated 23rd August 2023, passed by the learned ADJ-02, (North), Rohini, Delhi, in Civil Suit bearing CS DJ No. 343/19.

27. 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.

28. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 13, 2023

Dy/db/ryp

[Click here to check corrigendum, if any](#)