Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
(CIVIL REVISIONAL JURISDICTION)

Present:

The Hon'ble Justice Biswajit Basu.

C.O. 2555 of 2024

PEGASUS ASSETS RECONSTRUCTION PRIVATE LIMITED.

Vs.

DEBJYOTI BHATTACHARJEE & ORS.

For the petitioner:	Mr. Jishnu Saha, Sr. Adv. Mr. Rohit Das, Ms. Chitra Rentala, Ms. Richa Bharti, Ms. Kishwar Rahman, Ms. Sristi Roy, Ms. Rishav Mazumdar.
For the opposite parties:	Mr. Sakya Sen, Mr. Sudipta Kumar Bose, Mr. Falguni Bandyopadhyay, Ms. Sohini Bhattacharyya, Ms. Lipika Nath, Mr. Aniruddha Bandyopadhyay.

Heard on : 19.08.2024

Judgment on : 29.08.2024

Biswajit Basu, J.

1. The instant application under Article 227 of the Constitution of India is directed against the Order No. 26 dated June 11, 2024 passed by the learned Judge, Commercial Court at Alipore, District: 24 Parganas (South) in *Money Suit No. 04 of 2023.*

2. The defendant no. 1, the petitioner herein by an application under Order VII Rule 11 of the Code of Civil Procedure threw a challenge to the maintainability of the said suit and prayed rejection of its plaint on the grounds that the dispute sought to be raised in the suit is not a *'commercial dispute'* within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015 (hereinafter referred to as the *'the said Act of 2015*' in short) and that the cause of action of the suit is barred by limitation; the learned Trial Judge by the order impugned has dismissed the said application.

3. Mr. Jishnu Saha, learned senior advocate for the petitioner submits that the cause of action to file the suit is based on the allegation that a third party, to secure loan from the bank, had practiced fraud upon the predecessor-in-interest of the plaintiffs in putting his property as a collateral security to the said loan; therefore, the period of limitation for filing the suit, in terms of Section 17 of the Limitation Act, 1963 (hereinafter referred to as *'the said Act of 1963')* commences from the date when the plaintiff had discovered the said alleged fraud.

4. Mr. Saha, referring to paragraph 35 of the plaint, contends that the said paragraph discloses the cause of action of the suit, wherein it has been averred that such cause of action firstly arose on February 16, 2012 when the plaintiff had made payment of Rs. 1,46,00,000/-(One crore Forty Six lakhs rupees only) to the petitioner, as such, in terms of Article 56 of the said Act of 1963, the suit is required to be filed within a period of three years from the said date; instead, it has been filed almost ten years thereafter; the suit therefore, is apparently barred by limitation. To explain the scope of Section 17 of the said Act of 1963, Mr. Saha refers to the decisions of the Hon'ble Supreme Court in the case of ***P. RADHA BAI AND OTHERS* vs. *P. ASHOK KUMAR AND ANOTHER*** reported in **(2019) 13 Supreme Court Cases 445**, and in the case of ***SARANPAL KAUR ANAND* vs. *PRADUMAN SINGH CHANDHOK AND OTHERS*** reported in **(2022) 8 Supreme Court Cases 401** and in the case of ***SUPER DIAMOND TOOLS AND OTHERS* vs. *K. MOHAN RAO*** reported in **(2023) SCC OnLine SC 302**.

5. Mr. Saha, regarding the nature of the dispute raised in the said suit, submits that the plaintiff is alleging that the signature of his father was forged to secure the said loan, therefore when there is no transaction between the plaintiff's father and the predecessor-in-interest of the petitioner, the dispute raised in the suit cannot come within the purview of *'commercial dispute'* as defined under the said Act of 2015, consequently the plaintiff is not entitled to maintain the said suit before a Commercial Court.

6. Mr. Sakya Sen, learned advocate for the plaintiff, the opposite party no. 1 herein submits that the predecessor-in-interest of the plaintiff had lodged a complaint with the concerned Police authority alleging fraud and forgery to secure the said loan and on the basis of the said complaint, a criminal case was initiated in which it was found that such fraud and/or forgery was committed, but due to the failure of the police authority to trace the identity of the beneficiary of the said loan amount, the said criminal case, on December 02, 2020, was dropped by a final report pursuant to which the plaintiff had acquired specific knowledge about such fraud and/or forgery; therefore, in terms of Section 17 of the said Act of 1963, the cause of action to file the suit arose from the said date and in terms of Article 56 thereof, the suit was filed within three years thereafter; in this backdrop, it is preposterous to suggest that the suit is barred by limitation.

7. Mr. Sen further submits that the issue of maintainability of the suit was raised by the petitioner in *F.M.A. No. 353 of 2023 (F.M.A.T 170 of 2023)* and the Hon'ble Division Bench had answered the said issue in negative. The said judgment of the Hon'ble Division Bench was affirmed by the Hon'ble Supreme Court in *Special Leave Petition (c) No. 15629 of 2023.* The petitioner, with a *mala fide* intention to defer the disposal of the suit, is reiterating the selfsame issue knowing fully well that it is barred by the principle of *res judicata.* The next contention of Mr. Sen is that the petitioner is a finance company and the document relied on by the petitioner to enforce the re-payment of the alleged loan is a mercantile document, therefore, the dispute raised in the suit squarely comes under the definition of *'commercial dispute'* as defined under Section 2(1)(c) of the said Act of 2015.

Heard learned counsel for the parties, perused the materials-on-record.

8. The objection as to the nature of the dispute raised in the suit i.e. whether the said dispute is a 'commercial dispute' or not, at best can attract the provision of Order VII Rule 10 of the Code, not Order VII Rule 11 thereof, however, the said issue since has been raised, let me deal with it.

9. In terms of Section 2(1)(c)(i) of the said Act of 2015, 'commercial dispute' means a dispute arising out of ordinary transaction of merchant/bankers/financers and traders including enforcement and interpretation of such documents, and the explanation appended thereto clarifies that a commercial dispute shall not cease to be a commercial dispute merely because it also involves action for recovery of immovable property or for realization of monies out of immovable property given as security or involves any other relief pertaining to immovable property.

10. It appears from the record that the petitioner is a company incorporated under the Companies Act, 1956 and is also registered as a securitization and asset reconstruction company under Section 3 of the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 therefore, it has the character of banker/financer. The loan was obtained from the then United Bank of India (now Punjab National Bank) and the said loan was assigned to the petitioner by an agreement dated September 23, 2009 and on the basis of such mercantile document, the petitioner had realized the loan amount; the plaintiff has filed the suit to recover the amount so realized from him along with interest, therefore the learned Trial Judge has rightly rejected the challenge of the petitioner to the nature of the dispute raised in the said suit.

11. Let me now deal with the issue whether the cause of action of the suit is barred by limitation. The learned Trial Judge once had refused the prayer of the plaintiff for an *ad interim* order of attachment-before-judgment of the Bank Account of the petitioner; aggrieved thereby, the plaintiff had preferred an appeal before the Hon'ble Division Bench being *F.M.A. No. 353 of 2023.* The Hon'ble Division Bench, by an order dated April 20, 2023 had granted an *ad interim* order of injunction restraining the petitioner to withdraw and/or deal with the money lying in its bank account with the HDFC Bank, Mumbai Branch to the extent of the claim of the plaintiff for a period of eight weeks. The Hon'ble Division Bench, by the subsequent order dated June 14, 2023 had extended the said order of injunction for a further period of eight weeks, or until further order(s), whichever is earlier.

12. The petitioner had objected to the grant of such order of injunction *inter alia* on the grounds that the suit is barred by limitation. The Hon'ble Division Bench had overruled the said objection with the following findings:-

> *" ..Our attention is drawn to the final report submitted by the Investigating Officer, wherein it is categorically held that the Deed submitted with the United Bank of India is forged and fabricated, but astonishingly the case was dropped, as the identity of the person being a beneficiary*

of the loan amount could not be traced out. The moment the Investigating Officer arrived at the conclusion that the Deed relied upon by the Bank(UBI) is forged and fabricated, the present suit was filed for realization of the amount which was deposited with the respondent no.1 as assignee of the United Bank of India…."

"…Section 17 of the Limitation Act postulates that in a case of any suit or application for which the period of limitation has been provided in the said Act based on fraud of the defendant or the respondent or his agent, the period of limitation would not begin until the plaintiff/appellant has discovered the fraud or the mistake or could on reasonable diligence have discovered it. Article 56 thereof provides a period of limitation of three years in relation to a declaration of forgery of the instrument and the time from which such limitation would reckon shall be when the plaintiff/appellant becomes known to such forgery of the instrument.

The limitation in relation to a case based upon a fraud or forgery would reckon only from the date when such fraud or forgery is made known to the plaintiff/appellant. The pleadings on its meaningful reading would reveal that the plaintiff/appellant was skeptical about the commission of fraud or forgery though they all along asserted no document was ever executed by the predecessors nor them in relation to a loan given to the third party nor the property was put as a collateral security. Essentially, it is a mix question of fact and law depending upon the quality of the evidence to be adduced by the plaintiff/appellant and cannot be said to be an apparent case of coming within the mischief of provisions of the Limitation Act so as to disentitle the plaintiff/appellant to maintain the suit.

We, thus, do not find that any definite conclusion can be made over the plea of limitation at this stage and, therefore, said issue is kept open to be decided by the Court after full-fledged trial…"

13. The petitioner had assailed the said order of the Hon'ble Division Bench dated June 14, 2023 in *Special Leave to Appeal (c) No. 15629 of 2023* but had agreed to the disposal of the said Special Leave Petition on the following terms recorded in the order dated August 11, 2023:-

"
I. The petitioner shall deposit Rs. 1,46,00,000/- (Rupees One Crore Forty Six Lakhs only) within 4 weeks from today.
II. On deposit of the said amount, the order of attachment shall stand set aside.
III. The amount so deposited be kept in short term fixed deposit on auto-renewal basis and this disbursement of the amount would be subject to final outcome of the suit.
IV. The Commercial Court, Alipore shall expedite the hearing of the suit.
V. In view of the above, nothing survives in the appeal which is pending before the High Court. Consequently, FMA No. 353 of 2023 be treated as disposed of. "

14. Section 17 of the said Act of 1963 fixes the starting point of limitation to file a suit or application, cause of action of which is based on the effect of fraud or mistake, from the date of discovery of such fraud or mistake; the scope of the said provision of the said Act of 1963 has been lucidly explained in the decisions of the Hon'ble Supreme Court cited by Mr. Saha but in the facts and circumstances of the present case, the said decisions are of no help to his client.

15. In this backdrop, this Court is of the opinion that the learned Trial Judge has rightly refused to reject the plaint of the suit under Order VII Rule 11 of the Code on the ground of limitation.

16. The petitioner is well aware that the Hon'ble Division Bench, in the aforementioned appeal has extensively dealt with the issue of maintainability of the connected suit on the ground of limitation and after taking into consideration, the entire facts and circumstances of the present case, so also the relevant provision(s) of the said Act of 1963 including Section 17 thereof has opined that the said issue cannot be conclusively decided without full-fledged trial, the petitioner is also aware that the Hon'ble Supreme Court has directed expeditious disposal of the connected suit but unfortunately is reiterating the issue of maintainability of the suit with an attempt to delay the disposal of it, which cannot be viewed lightly.

The order impugned for the reasons discussed above, does not call for any interference; consequently, C.O. 2555 of 2024 is dismissed with costs assessed at **Rs. 50,000/-** (Rupees Fifty thousand only) to be paid by the petitioner to the plaintiff, the opposite party no. 1 herein, **within a period of two weeks from date**.

Parties to act on the server copy of this judgment duly downloaded from the official *website* of the Court.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAJIT BASU J.)

LATER

After delivery of judgment, learned advocate for the petitioner prays for stay of all further proceedings of the connected suit.

Prayer is considered and rejected.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAJIT BASU, J.)