IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CIVIL REVISION APPLICATION NO.52 OF 2023

Applicants : (Original Defendant No.1)

1. M/s. Nanhaka Tanneries Pvt. Ltd.
A Company Registered Under The Companies Act,
Through Its Managing Director,
Registered Office, 233/2, Village Jamtha,
Gumgaon, Wardha Road, Nagpur – 441122,
Maharashtra.

(Original Defendant No.2)

2. Shri Shekhar Dhruvprasad Rai,
(Director of M/s. Nanhaka Tanneries Pvt. Ltd.)

(Original Defendant No.3)

3. Shri Vaibhav Shekhar Rai,
(Director of M/s. Nanhaka Tanneries Pvt. Ltd.)

(Original Defendant No.4)

4. Shri Saurabh Shekhar Rai,
(Director of M/s. Nanhaka Tanneries Pvt. Ltd.),
Principal Place of Business,
Place/Office : 12, East High Court Road,
Ramdaspeth, Nagpur – 440010, Maharashtra.

– Versus –

Non-Applicant : (Original Plaintiff)

Mr. Devkinandan s/o Madhusudan Khandelwal,
Proprietor of M/s. United Chemicals & Scientifics,
Aged about 72 years, Occupation : Business,
Shop/Office : 37, Near New Bhandara Road
Railway Crossing, Jalaram Nagar,
Nagpur – 440035, Maharashtra.

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Mr. H.S. Chitaley with Mr. Y.R. Kinkhede,
Advocates for the Applicants.
Mr. Vinay V. Sharma, Advocate for the Non-Applicant.

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CORAM : **M.W. CHANDWANI, J.**
RESERVED ON : **19th JANUARY, 2024.**
PRONOUNCED ON : **20th FEBRUARY, 2024.**

JUDGMENT:

Heard.

02] **Admit.**

03] The civil revision application challenges the order dated 13/04/2023 passed by the learned Civil Judge Senior Division, Nagpur in Special Civil Suit No.586/2021 thereby rejecting the application filed by the applicants under Order VII Rule 11(d) of the Code of Civil Procedure (C.P.C.).

04] The non-applicant/original plaintiff has filed a suit for recovery of Rs.5,76,453/- against the applicants-original defendants alleging that an amount of Rs.3,94,106/- together with interest at the rate of 18% per annum (from the date of purchase) is due. The applicants filed application before the learned trial Court vide Exh.19 under Order VII Rule 11 read with Section 151 of C.P.C. for rejection of plaint on the ground that the suit is barred by law of limitation and, therefore, the plaint be rejected. The learned trial Court rejected the application on the ground that the contention alleged in the plaint, documents and alleged acknowledgment are to be tested during trial.

05] Heard the learned Counsel for the applicants as well as the learned Counsel for the non-applicant.

06] It is the settled principle of law that if on the face value of the contents of the plaint, it is seen that the suit is barred by limitation, then and then only the plaint can be rejected under Order VII Rule 11(d) of C.P.C. on the ground of limitation as held in the case of **Sri Biswanath Banik and another vs. Sulanga Bose and others – (2022) 7 SCC 731,** relied by the learned Counsel for the applicant. Further, if on the entire and meaningful (not formal) reading of averments of plaint, it is found not to be disclosing a cause of action and clear right to sue or is found to be barred by law of limitation, the plaint is liable to be rejected as held in the case of **Raghwendra Sharan Singh vs. Ram Prasanna Singh (Dead) by Legal Representatives – (2020) 16 SCC 601.** In the light of these principles, let us see whether the plaint filed by the non-applicant is liable to be rejected under Order VII Rule 11(d) of C.P.C. on the ground that it is barred by law of limitation.

07] The plaint depicts that an amount of Rs.3,94,106/- was outstanding against the applicants on account of credit purchase of the goods during the period from 2013, 2014 and 2016 and further a statement is made that the said amount is outstanding from 23/04/2015 to 05/09/2015. The plaint further contends that the applicants acknowledged the outstanding balance confirmation intimation on 23/03/2018. As per Section 18 of the Limitation Act, 1963 (hereinafter referred to as "the Act" for short), if an acknowledgment of admitting the outstanding balance is given in writing, then fresh period of limitation of three years would start from the date of such acknowledgment. In that case, three years would expire on 23/03/2021.

08] It is a matter of record that the pandemic situation emerged in the country in March, 2020 and in the wake of lock down due to pandemic in the entire country from 23/03/2020, the Supreme Court in a decision in ***Suo Motu Writ Petition (C) No. 3 of 2020,*** excluded the period from 15/03/2020 till 28/02/2022 in computing the period of limitation for instituting the suits/ proceedings. Needless to mention that the suit has been filed by the non-applicant on 02/08/2021.

09] The main contention of the learned Counsel for the applicants is that the alleged acknowledgment is not an acknowledgment as per Section 18 of the Act. According to him, the document allegedly showing acknowledgment of confirmation of the outstanding on 23/03/2018 by the applicants is nothing but a receipt of the letter issued by the non-applicant and, therefore, it cannot be construed as acknowledgment. The signature of the non-applicant on the said letter is nothing but a token of receipt of the letter, which was to be replied to by the applicants. The applicants never replied the said letter agreeing to the outstanding balance and, therefore, this is not an acknowledgment within the meaning of Section 18 of the Act.

Therefore, the period of limitation will not get extended by the alleged signature of the applicants on the letter issued by the non-applicant. According to him, the suit is patently barred by the law of limitation.

10] As it can be seen from the plaint itself, the non-applicant has claimed the said letter as an acknowledgment of the balance confirmation by the applicants on 23/03/2018. Whether the said signature on the said letter is an acknowledgment of outstanding amount or mere a token of receipt of the said letter, is a disputed question, which can be gone into during trial. In the plaint, the non-applicant has specifically alleged that by the said letter, the applicants have acknowledged the outstanding balance by signing the said letter. Considering this statement at its face value, in this scenario, the non-applicant cannot be non-suited at the threshold.

11] The learned trial Court has rightly observed in the impugned order that these facts and also the documents placed on record by the non-applicant during trial are required to be examined in the light of Section 18 of the Act. Therefore, the order of the learned trial Court does not require interference. Accordingly, the application is dismissed.

(M.W. CHANDWANI, J.)

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