



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

WRIT PETITION NO. 8314 OF 2022

PETITIONER : Mrs. Rashmi W/o Ajay Fadnavis,
Age : 49 years,
Occupation : Business,
Resident of : Plot No.160,
Balaji Nagar, Manewada,
Nagpur 440032.

V E R S U S

RESPONDENTS :

1. Mr. Shailesh S/o Narayan Agrawal,
Age : 55 Years, Occupation : Business
Resident of Flat No: A-603, NIT
Complex, Hill Road, Gandhinagar,
Nagpur 440010.
2. HDFC LTD.
Through its Manager,
HDFC House,
Civil Lines, Nagpur.

Dr. T. D. Mandlekar and Shri T. V. Fadnavis, Advocates for petitioner.
Shri N. V. Fulzele, Advocate for respondent No.1.
Shri Abhijeet Deshmukh, Advocate h/f Shri S. N. Gawande, Advocate for
respondent No.2.

CORAM: BHARAT P. DESHPANDE, J.
DATED : 12/03/2024.

ORAL JUDGMENT :

1. Heard. **Rule**. Rule made returnable forthwith. Heard
learned counsel appearing for the parties, with consent for final
disposal.

2. The order impugned in the present petition is dated
09/11/2022 passed by the Trial Court, thereby rejecting the
application for amendment of the plaint only on the ground that

the relief claimed therein is barred by Law of Limitation.

3. Learned counsel for the petitioner would submit that the proposed amendment is actually filed within the limitation, however, the period of limitation was suspended by the Hon'ble Apex Court, specifically during the Covid period from 15/03/2020 up to 28/02/2022. The application for amendment was in fact filed on 08/04/2021 whereas limitation for recovery of the amount of three cheques which were bounced, expired on 07/05/2020 i.e. during Covid period. Learned counsel while relying on the decision of the Hon'ble Apex Court in Re : Cognizance of Extension of Limitation in Misc. Application No.21/2022 in Misc. Application No.665/2021 in Suo Motu Writ Petition (C) No.3/2020 dated 10/01/2022, would submit that since the limitation to claim the relief expired during Covid period, such limitation was extended by the order of Hon'ble Apex Court till 28/02/2022, however, amendment application was in fact filed on 08/04/2021 and thus, the rejection of the application by the Trial Court clearly shows that such order is passed against the directions given by the Hon'ble Apex Court and by non-application of mind. He submits that the application was well within the limitation and therefore, ought to have been allowed.

4. Per contra, learned counsel appearing for the respondents though initially disputed the said facts, now fairly considered that the application for amendment is in fact filed within limitation.

5. The impugned order clearly goes to show that the learned Trial Court rejected such application only on the ground that the proposed amendment is barred by Law of Limitation. Even though the earlier decisions were considered, the decision passed by the Hon'ble Apex Court in *Suo Motu Writ Petition (C) No.3/2020* dated 10/01/2022 was not at all referred or considered. The impugned order was passed on 09/11/2022. It is a matter of record that the decision of the Hon'ble Apex Court in *Suo Motu Writ Petition (C) No.3/2020* including the order dated 10/01/2022 was widely circulated amongst all the Courts in India. In spite of this fact, learned Trial Court by completely ignoring the directions given by the Hon'ble Apex Court and by non-application of mind, rejected the amendment application solely on the ground that the relief claimed therein is time barred.

6. The cheques in question were returned unpaid / stop payment on 17/04/2017, 18/04/2017 and 25/04/2017. The legal notice was issued to the respondent on 08/05/2017 and it was

received by the respondent on 15/05/2017. There is no dispute about these dates. Accordingly, limitation for filing of the suit would commence from the date of receipt of notice or at the most from the date of knowledge of bouncing of the cheques. Thus, the first date when the cheque was bounced is dated 17/04/2017. The period of three years is completed on 16/04/2020. By that time and due to Covid Pandemic, the period of limitation was suspended by the Hon'ble Apex Court w.e.f. 15/03/2020. Thus, the limitation for filing of the suit for recovery of the amount mentioned in the cheque expired during the period of Covid Pandemic and more particularly, after 15/03/2020. Accordingly, as directed by Hon'ble Apex Court in Suo Motu Writ Petition (C) No.3/2020, the period of limitation was suspended and therefore, learned Trial Court ought to have considered this aspect. By not taking into consideration the directions issued by Hon'ble Apex Court, the learned Trial Court committed a gross error in rejecting such application.

7. Having said so, the impugned order needs interference. Accordingly, the impugned order is quashed and set aside.

8. The amendment application is accordingly allowed.

9. Rule is made absolute in the above terms. No order as to costs.

[BHARAT P. DESHPANDE, J.]

Choulwar