



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

**CIVIL REVISION APPLICATION (CRA) NO. 29 OF 2024**

Maharashtra State Seeds Corporation Ltd., Akola

.Vs.

Nilkamal S/o. Vyankatrao Pawar and other

---

Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions      Court's or Judge's orders.  
and Registrar's Orders.

---

Mr J. B. Kasat, Advocate for the applicant

Mr. Harnish Gadhia, Advocate for respondent No.1

**CORAM : G.A. SANAP J.**

**DATE :SEPTEMBER 13, 2024**

Heard finally at the admission stage.

2. In this revision application, the challenge is to the order dated 23.08.2023 passed by the learned 2<sup>nd</sup> Joint Civil Judge Senior Division, Akola, whereby the learned Judge rejected the application made by the defendant for rejection of the plaint. The parties in this order would be referred by their nomenclature in the plaint.

3. The plaintiff filed a suit for recovery of the amount of Rs.8,60,392/- and for the recovery of interest on the sum of Rs.1,55,525/-. The plaintiff was appointed as an Assistant Field Officer in the head office of defendant No.2 Corporation. In due course, the plaintiff

was promoted as a District Manager Grade-II. The plaintiff retired on 31.03.2018. It is stated that vide communication dated 19.03.2018, defendant No.2 informed the plaintiff about a proposed departmental inquiry against him on the ground of financial irregularities noticed by defendants for the year 2016-17. The departmental inquiry was not initiated. Instead of inquiry, initially, the amount of Rs.4,35,063/- was recovered and deducted from his retiral benefits. However, subsequently, the corporation modified the earlier order and directed the deduction of Rs.1,55,525/- from the retiral benefits of the plaintiff.

4. The plaintiff, thereafter, filed a suit contending that he is entitled to recover retiral benefits in a sum of Rs.8,60,392/- and the interest on delayed payment of retiral benefits i.e. Rs.1,55,525/-. The bifurcation of the amount sought to be recovered has been provided in the plaint.

5. Defendant No.2 filed the application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint on three grounds.

i] The suit is barred by limitation.

ii] Section 80 CPC notice was not issued and

iii] The suppression of material facts with regard to the filing of writ petition.

6. Learned Judge, on consideration of the material placed on record, has held that no case was made out for rejection of the plaint. Learned Advocate for respondent No.2/plaintiff fairly conceded that the ground with regard to the bar of a suit on the ground of Section 80 of the Code of Civil Procedure (for short 'the CPC') may not be tenable in the backdrop of the factual position. As far as the limitation and the ground of suppression of facts is concerned, it is submitted that there has been inordinate delay in filing the suit. It is submitted that the plaintiff has suppressed the fact with regard to the filing of a writ petition. The suppression of material facts in the plaint filed before the Civil Court is a serious defect in the plaint and on this ground the plaint is liable to be rejected.

7. Learned Advocate for the plaintiff submitted that the issue of limitation is a mixed question of law and

facts. It is submitted that in the plaint, the plaintiff has pleaded the cause of action for filing the suit and from the date of accrual of the cause of action the suit is within limitation. Learned Advocate further submitted that the ground of suppression of facts could not be a ground for rejection of a plaint under Order VII Rule 11 of the CPC.

8. I have gone through the pleadings and order. The learned Judge has considered the facts and the settled position in law while rejecting the application. On the ground of suppression of facts, the plaint cannot be rejected by invoking the provisions of Order VII Rule 11 of the CPC. Similarly, while deciding the application made under Order VII Rule 11, the Court has to consider the averments made in the plaint and not the defence of the defendants. On the basis of the material facts pleaded in the plaint, the Court has to form a *prima facie* opinion as to the maintainability of the suit, in the backdrop of the grounds for rejection of a plaint provided in Order VII Rule 11 of the CPC. It is a trite that the question of limitation is not a pure question of law. It is a mixed question of law and facts. In this view of the matter, the issue of mixed question of law and facts has to be decided on the basis of the evidence. In my view, there is no

substance in this revision application. No case is made out for rejection of the plaint on any of the grounds pleaded in the application. As such, the application is **dismissed.**

9. The civil revision application stands disposed of, accordingly.

(G. A. SANAP, J)

*Namrata*