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A.No.4662 of 2021 in

C.S.No.178 of 2019

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P.VELMURUGAN, J.

This application is filed under Order VII Rule 11(d) of CPC by the defendant seeking to reject the plaint.

2 Learned Senior Counsel for the applicant/defendant would submit that the plaint is barred by law of limitation, jurisdiction and the plaint does not disclose cause of action. The plaintiff has not shown cause of action nowhere or through any document that the cause of action arisen within the jurisdiction of this Court. Therefore this Court has no jurisdiction at all to try the above civil suit.

2.1 Further even though according to the plaintiff, the suit is filed within the period of limitation, there was deficit court fee. The plaint was returned for want of court fee, but the same has not been paid within the time limit granted by the Registry or within the period of limitation. Therefore deficit court fee has been paid beyond the period of limitation and hence the plaintiff filed application under Section 149 CPC. But, the learned Master of this Court,



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without ordering notice to this applicant/defendant and without hearing the applicant/defendant, allowed the application under Section 149 CPC filed by the respondent/plaintiff. Therefore it is clear the plaint has not been presented with sufficient court fee and even when it was returned for deficit court fee, the same has not been re-presented within the period of limitation. In support of his contentions, the learned Senior Counsel has placed reliance on the judgments of this Court reported in ***CDJ 2003 MHC 947 and CDJ 2010 MHC 1979.***

2.3 Learned Senior Counsel for the applicant/defendant would submit that at any angle, the plaint has to be rejected under Order VII Rule 11(d) of CPC.

3 Learned counsel for the respondent/plaintiff would submit that the plaintiff has pleaded cause of action in paragraph no.19 of the plaint, which arisen within the jurisdiction of this Court. The plaintiff filed an application for leave to sue and this Court granted the same. Due to illness and inadvertently the Court fee has not been paid within the period of limitation and therefore later the plaintiff filed an application under Section 149 CPC and this Court



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also condoned the delay and plaint was taken on file.

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3.1 Learned counsel would further submit that since part of cause of action has arisen within the jurisdiction of this Court, this Court has got jurisdiction and the plaint cannot be rejected on the grounds taken by the applicant/defendant, since none of the grounds taken by the applicant/defendant fall under Order VII Rule 11 CPC. Further Section 149 CPC can be invoked at any stage of the suit and the Court can allow the same. Therefore the contention of the learned Senior Counsel is not acceptable.

3.2 In this case, the respondent/plaintiff had filed an application under Section 149 CPC and this Court allowed the same and taken the plaint on file, but the applicant/defendant did not challenge the same. The respondent/plaintiff along with application under Section 149 CPC re-presented the plaint and the Court also accepted the same and the applicant/defendant did not even challenge the same. Therefore the applicant/defendant now cannot take the above aspects as grounds in the application to reject the plaint. The learned counsel has placed reliance on the various judgments of the Hon'ble Supreme Court.



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4 Heard the learned Senior Counsel for the applicant/defendant and the learned counsel for the respondent/plaintiff and perused the materials placed on record.

5 The learned Senior Counsel has mainly taken three grounds in the application to reject the plaint viz. (1) limitation (2) jurisdiction and (3) plaint does not disclose cause of action. As far as the plea of limitation is concerned, the plaint is presented and was returned for deficit Court fee and later the plaint was re-presented along with Section 149 CPC application, however, the same was allowed and the Court fee was accepted and the plaint was also taken on file, but the applicants/defendants did not challenge the same. It is to be noted that Section 149 CPC can be invoked at any stage of the suit and the Court, in its discretion, at any stage can allow to pay the deficit court fee and the same shall have the effect as if such fee had been paid in the first instance. In this case, once this Court accepted the delay and taken the plaint on file, which was not challenged by the applicant/defendant, the plaint cannot be rejected on the ground of limitation. Further more, limitation is a mixed question of law and fact and the same can be determined after trial not at this stage. Under this



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circumstances this Court cannot accept the arguments advanced by the learned Senior Counsel for the applicant/defendant and the citations referred to by him is not applicable to the present case on hand.

6 As far as jurisdiction is concerned, in the paragraph no.19 of the plaint, it is stated that a promissory notes have been executed in Chennai. There are several promissory notes and cheques and even though the learned Senior Counsel contended that the same were not related, whether the same are related and executed in Chennai or not is a matter for trial. The applicant has not filed any application to revoke the leave to sue granted by this Court. Therefore this Court finds the plaintiff has made averments with regard to jurisdiction and cause of action.

7 Further more it is settled proposition of law that while deciding the application under Order VII Rule 11, the Court has to see the averments made in the plaint and not the defence taken by the defendants.

8 A careful perusal of the plaint shows that there is averments in the plaint with regard to the jurisdiction and cause of action and this court does not



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find any ground to reject the plaint. Therefore, this application is dismissed.

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9 Even though the right of the applicant/defendant to file written statement has been forfeited by this Court vide its order dated 22.02.2023, the applicant/defendant shall file admission/denial of documents filed by the respondent/plaintiff on or before 29.04.2024.

List the suit on 30.04.2024.

10.04.2024

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10.04.2024