



Original Side Appeal (CAD) No.141 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2024

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR JUSTICE R.SAKTHIVEL

Original Side Appeal (CAD) No.141 of 2021

M.Mohan

Proprietor, Sivasakthi Corporation,
Office at No.319, Nehru Street,
2nd Line, Near Funmell,
Peelamedu Post, Coimbatore 641 004.

... Appellant

Versus

Tamil Nadu Co-operative Union,
Rep. by Special Officer/
Managing Director N.V.Natarajan Maaligai,
No.170, Periyar EVR Road, Kilpauk,
Chennai 600 010.

.... Respondent

PRAYER: Original Side Appeal (CAD) filed under Section 13 of the
Commercial Courts Act, 2015 and Order XXXVI Rule 1 of the Original Side



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Rules, to set aside the fair and decretal dated 19.08.2021 and made in Application No.2087 of 2021 in C.S.No.72 of 2020.

For Appellant : AR.L.Sundaresan

For Respondents : Balaramesh
(in both the Appeals)

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

Aggrieved by the order of the learned Single Judge passed in Application under Order VII Rule 11(d) of the Code of Civil Procedure rejecting the plaint on the ground that the suit is barred by limitation, the plaintiff is on Appeal.

2. The suit was launched by the plaintiff for recovery of a sum of Rs.2,57,91,638/- with interest at 18% from the date of plaint till date of realization. The short facts that led to the filing of the suit are as follows:



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3. The defendant called for a tender for purchase of certain machineries for the Industrial Training Institutes run by it. The total value of the machineries was about Rs.6,86,93,549/-. Orders were placed on 06.06.2012 for supply of the machineries.

4. The plaintiff/appellant herein had supplied machineries worth Rs.4,97,14,956/- and the defendant had paid a sum of Rs.2,39,23,318/-. The balance amount was not paid. This led to the plaintiff filing a Writ Petition in WP No.11061 of 2014 seeking a Mandamus to dispose of the representation dated 13.03.2014, wherein he had claimed payment of the balance amount due for the machineries supplied by him. This Court disposed of the Writ Petition directing the defendant to consider the representation of the petitioner. Consequent upon the same, the representation of the petitioner was disposed of on 07.01.2015.

5. It is claimed in the plaint that the defendant disposed of the



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representation stating that proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act were initiated and therefore, the payments could not be made immediately. Thereafter, after prolonged correspondence, the defendant wrote to the plaintiff on 03.06.2019 acknowledging the liability and stating that the amount will be disbursed only after getting necessary permission from the higher Authorities. There was also another letter dated 19.09.2018, wherein, according to the plaintiff, the defendant had acknowledged the liability to pay the balance of Rs.2,57,91,638/-. Relying upon these two letters and contending that there was an acknowledgement to pay, the plaintiff filed the suit on 06.12.2019.

6. Pending suit an application was filed seeking rejection of the plaint on the ground that the suit is barred by limitation as the purchase order was made as early as on 06.06.2012 and the machineries were supplied in the year 2012 itself. The learned Single Judge after going through the documents, particularly the two letters dated 19.09.2018 and 03.06.2019, concluded that these letters would not amount to an acknowledgment of liability, since they



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have emanated after the expiry of the original period of limitation. After recording the said finding, the learned Judge found that suit as filed seeking recovery of money is barred by limitation. This led to the rejection of the plaint on the ground that it is barred by limitation. Hence this Appeal.

7. We have heard Mr.Ar.L.Sundaresan, learned Senior Counsel for Mrs.A.L.Ganthimathi, for the appellant and Mr.R.Bala Ramesh, learned counsel appearing for the respondent.

8. Mr.Ar.L.Sundaresan, learned Senior Counsel appearing for the appellant would submit that while deciding an Application under Order VII Rule 11 of the Code of Civil Procedure, the Court has to see only the allegations in the plaint and the plaint documents. Even though it is open to the Court to reject the plaint on the ground of limitation, such rejection cannot depend on a decision or interpretation of the effect of a plaint document. A Court can reject the plaint on the ground of limitation only if it is on the face of it barred by limitation, nothing other than the allegations in the plaint can



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be looked into by the Court while rejecting the plaint on the ground of limitation.

9. The learned Senior Counsel would place reliance on the judgment of the Division Bench of this Court in ***Dr. L.Ramachandran and another v. K.Ramesh and Others***, reported in **2015 (4) LW 585**, wherein the Division Bench, while recognizing the power of the Court to reject the plaint as barred by limitation, had held that a rejection under Order VII Rule 11 of the Code of Civil Procedure, particularly on the ground of limitation, can be made only if the Court is convinced from the allegations in the plaint that the suit is *ex-facie* barred by limitation. In the course of the said judgment, the Division Bench had observed as follows:

“26. In terms of Order 7 Rule 11(d) CPC, the Plaint shall be rejected where the suit appears from the statement in the Plaint to be barred by any law. The scope of Rule 11 of Order 7 CPC has been explained in various decisions and the legal



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*principle deducible are that, if the Plaint does not disclose the cause of action or is bared by law; can be rejected where the litigation was utterly vexatious and abuse of process of Court; if any one of the conditions mentioned under the Rule were found to exist, thus saving the defendants onerous and hazardous task of contesting a non maintainable suit during the course of protracted litigation and where the suit was instituted without proper authority. Thus, the provision of Order 7 Rule 11 PC being procedural is designed and aimed to prevent vexatious and frivolous litigation. **The plaint is liable to be rejected on the ground of limitation only where the suit appears from the statements in the plaint to be barred by any law and the law within the meaning of clause (d) of Order 7 Rule 11 CPC, shall include law of limitation as well.***



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10. The Hon'ble Supreme Court in ***Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by Legal Representatives***, reported in (2020) 16 SCC 601, had an occasion to consider a similar question. The Hon'ble Supreme Court observed as follows:

“9.Now, so far as the application on behalf of the original plaintiff and even the observations made by the learned trial court as well as the High Court that the question with respect to the limitation is a mixed question of law and facts, which can be decided only after the parties lead the evidence, is concerned, as observed and held by this Court in Sham Lal v. Sanjeev Kumar, (2009) 12 SCC 454 : (2009) 4 SCC (Civ) 741, N.V. Srinivasa Murthy v. Mariyamma, (2005) 5 SCC 548, as well as in Ram Prakash Gupta v. Rajiv Kumar Gupta, (2007) 10 SCC 59] , considering the averments in the plaint if it is found that the suit is clearly barred by law of



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limitation, the same can be rejected in exercise of powers under Order 7 Rule 11(d) CPC.”

11. In view of the clear dicta of the Hon’ble Division Bench and the Hon’ble Supreme Court, the requirement of law for a Court to reject a plaint as barred by limitation is that it should be shown that the suit is *ex-facie* barred by limitation and it should so appear from the reading of the plaint. The Court shall not at that stage embark upon a further enquiry as to the effect of the documents that are relied upon by the plaintiff to show that the suit is well within time, that would be a matter for evidence since it has always be held that limitation is a mixed question of the fact and law.

12. We shall now examine the case on hand in the light of the law settled by the Hon’ble Supreme Court. The plaint in the case on hand contains a specific claim that the letter dated 03.06.2019 would amount to an acknowledgment of debt. The question, as to whether, the said letter would



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amount to an acknowledgment of debt within the meaning of Section 18 of the Limitation Act, is not a question which could be answered at the threshold, it has to necessarily depend on the evidence that is to be let in. However, the learned Single Judge has gone into the letter, interpreted its language and held that it would not amount to an acknowledgment in writing within the meaning of Section 18 of the Limitation Act. This exercise, in our considered opinion, ought not to have been carried out by the learned Single Judge. This must have been relegated for trial as it would depend on the evidence that is to be let in the case on hand.

13. The learned Judge has not considered the effect of the other letter dated 19.09.2018. Though there is no specific reference to the said letter in paragraph 8 of the plaint, the said letter has been produced as a plaint document. We therefore, conclude that the learned Judge has travelled beyond the jurisdiction that could be exercised under Order VII Rule 11(d) of the Code of Civil Procedure.



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14. We have no hesitation in allowing this Appeal, setting aside the order of the learned Single Judge. The suit will stand restored to file to be disposed of in accordance with law. The question of limitation will also be decided as an issue after trial, without being influenced by any of the observations made by us in the course of this order. The Appeal is **allowed**. There shall be no order as to costs.

15. Mr.Ar.L.Sunderasan, learned Senior Counsel appearing for the appellant would submit that the appellant is entitled to refund of Court Fee, since the Appeal has been allowed. Our attention is drawn to Section 67(1) of the Tamil Nadu Court Fees Act which reads as follows”

“67. Refund in cases of remand.-

(1) Where a plaint or memorandum of appeal which has been rejected by the lower Court is ordered to be received; or where a suit is remanded in appeal for a fresh decision by the lower Court, the Court making the order or remanding the appeal may direct the refund to



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the appellant of the full amount of fee paid on the memorandum of appeal; and, if the remand is on second appeal, also on the memorandum of appeal in the first appellate Court and, if the remand is in Letters Patent Appeal, also on the memorandum of second appeal and memorandum of appeal in the first appellate Court.”

16. In view of the above provision and since we have set aside the order of the learned Judge rejecting the plaint, we direct refund of the Court Fee that has been paid on the memorandum of Appeal in full to the appellant.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)

12.03.2024

jv

Index : Yes

Internet : Yes

Neutral Citation : Yes

Speaking Order



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To
The Section Officer,
Original Side,
High Court of Madras



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and

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