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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CS(OS) 75/2021, I.A. 8694/2022

THE HANDICRAFTS AND HANDLOOMS EXPORTS CORPORATION OF INDIA LIMITED. ..... Plaintiff

Through: Mr. Nitin Saluja, Mr. Akshay Dev, Ms. Ashmita Narula, Mr. Rishabh Rana, Advs.

versus

SHRI NIRMAL SINHA ..... Defendant

Through: Mr. Kushagra Pandey, Adv.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

O R D E R

% **23.02.2024**

I.A. 10246/2021

1. The present application has been moved under Order VII Rule 11 of the CPC on behalf of defendant seeking following prayers;

    a) Reject the instant Suit of the Plaintiff with costs;

    b) Pass such order or any further order(s) as this Hon'ble Court may deem fit and proper in the interest of justice.

2. Learned counsel for the applicant/defendant has submitted that the present suit is hopelessly barred by limitation and is liable to be rejected. It has been submitted that in the present suit the plaintiff is seeking declaration and ancillary relief of recovery of INR

2,68,87,601/- with interest @ 24% p.a. The applicant states that admittedly the subject matter transactions took place in 2004-06 whereas the present suit has been filed on 10.12.2020. Learned counsel submits that as per Article 58 of the Limitation Act, 1963 the limitation period of 3 years starts from when the right to sue accrues first. It has been submitted that it is a clear attempt of clever drafting. The plea taken by the plaintiff that the right to sue first accrued on 06.11.2018 is misleading. It has further been submitted that on 07.05.2015, Plaintiffs division in its administrative ministry forwarded Defendant's vigilance profile for extension of his tenure beyond 19.07.2015 along with the details of three complaint cases which were sent to the CVC on 14.05.2015. These complaint cases include the one in respect of which, the captioned recovery suit was filed in 2020.

3. Learned counsel for the applicant submits that the alleged irregularities regarding financial losses caused to the Handicraft & Handloom Exports Corporation of India (plaintiff-HHEC) through bullion business was considered at the cabinet Secretariat level and they were informed that the due procedure had been followed by the competent authority while promoting the respondent. It has further been submitted that vide communication dated 06.08.2015, the CVC has asked joint Secretary and CVO Ministry of Textiles that whether any misconduct could be attributed to the defendant in the legal cases. It has further been submitted that vide communication dated 24.10.2016, Ministry Textiles informs the CVC that purported supervisory lapses occurred on part of the Defendant are grave

enough to constitute misconduct.

4. The plea of the defendant is that from 2013 itself, not just the Plaintiff but even its administrative ministry i.e. Ministry of Textiles as well as the CVC, had the knowledge of the entire facts pertaining to the present case, which occurred in 2005-06. It has further been stated that even the plaintiff in para 14 and 15 of the plaint has stated that in the year 2016 and 2016, the extension of tenure of the plaintiff for the post of Chairman-Managing Director was due for which the vigilance was required, which was taken up by the CVC and the process was initiated. Learned counsel submits that the cause of action created by the plaintiff on the basis of OM No.C-31011/5/2015 vigilance dated 06.11.2018 is misconceived.
5. Learned counsel for the defendant has further submitted that even in the OM dated 06.11.2018, it was recorded that undue hardship has been caused to the defendant by not releasing his dues. It has further been submitted that the matter was well within their knowledge since March, 2006 and the present suit is hopelessly barred by the limitation. It has further been submitted that even at this moment, it was opined that since the role of the plaintiff to be investigated pertains to years 2005-08, therefore as per four year criteria of HHEC Rules, the said case has become time barred and as such no the disciplinary action cannot be taken against the defendants.
6. Learned counsel for the defendant has submitted that immediately after the incident, while the defendant was functioning as the General Manager, Finance, appropriate action was taken against the delinquent officers. It has further been submitted that since it is a company under

Section 617 of Companies Act, 1956, all the actions of the company are duly approved by the Board of Directors. It has further been submitted that the defendant in his capacity of as a General Manager has even instituted a litigation after due approval from the Board. Learned counsel submits that the present suit is a case of clever drafting and is liable to be rejected.

7. Per contra, learned counsel for the plaintiff/non applicant submits that the limitation is a mix question of facts and law.

8. Learned counsel has relied upon the judgment of ***Narne RamaMurthy v. Ravula Somasundaram and Others***, (2005) 6 SCC 614 and ***Hitender Shokeen v. Rajan Kumar Shokeen and Others****,* 2023 SCC OnLine Del 2774 and submits that Court is at the stage of Order 7 Rule 11 CPC cannot go into this. Learned counsel has submitted that the present application is vague, contrary and devoid of merits and is liable to be dismissed with the cost.

9. Learned counsel for the plaintiff submits that procedural irregularities of the defendant were discovered only in 2017 after which the approval for *inter alia* filing a Recovery Suit was received in 2019 (filed in 2021). Learned counsel for the plaintiff submits that it was specifically pleaded that from 2006 to 2018, the defendant, in order to conceal his illegal acts and with the intent to wriggle out its liabilities, initiated various litigations against the concerned companies, and disciplinary proceedings against his juniors to shift the blame on them. It has further been submitted that the question of limitation is based on intricate facts and, it is a 'triable issue' for which the matter is required to be adjudicated. Learned counsel for the plaintiff submits

that plaintiff is a Government organization and is bound to follow the protocol and hierarchy as per its rules. It has been submitted that the Plaintiff's right to sue accrued only after a proper inquiry was conducted. It has further been submitted that there are various departments involved and plaintiff could have instituted the suit only after clearance from all the departments.

10. Learned counsel submits that on 07.05.2015, the Chief Vigilance Officer of the plaintiff sent the defendant's vigilance profile to the Nodal Ministry and the same was forwarded to Vigilance Division of the Nodal Ministry for vigilance clearance and then to CVC. It has further been submitted that on 06.08.2015, CVC of Nodal Ministry sought a clarification whether any misconduct could be attributed to the defendant. Subsequently, the Vigilance Division of Nodal Ministry clarified that the Defendant's supervisory lapses were grave enough to constitute misconduct. It has further been submitted that on 21.11.2016, CVC sought another clarification as it was not clear whether the Disciplinary Authority had taken a tentative view, and the Ministry was advised to take the matter to its logical conclusion and then approach for clearance.

11. Learned counsel for the plaintiff submitted that on 25.05.2017, CVO/plaintiff was requested to obtain an explanation from the Defendant and examine his response w.r.t the documentary evidence and Rules as to whether any action could be initiated against him and to submit a report to the Ministry. It has further been submitted that on 14.11.2017, CVO (Plaintiff) gave a detailed report after obtaining the Defendant's explanation wherein it was stated that avoidable

losses (Rs. 186.41 Lakhs and Rs. 82.47 Lakhs) were incurred due to the Defendant's lapses, casual and negligent conduct and that (i) there was a clear departure from the set procedures, and (ii) disciplinary action cannot be initiated due to lapse of 4 years.

12. It has further been submitted that thereafter the case file was referred to the Ministry of Law and Justice (Department of Legal Affairs) for a legal opinion on (a) criminal proceedings, and (b) recovery of losses. Learned counsel for the plaintiff submitted that on 08.10.2018, the Department gave an opinion that (i) no Disciplinary inquiry could be initiated due to lapse of 4 years, (ii) an offence under Section 420, IPC appears to have been made out and the Administrative Ministry may lodge an FIR, and (iii) if the Administrative Ministry has sufficient evidence, it may file a Recovery Suit.

13. Learned counsel submitted that pursuant to this, the Vigilance Division of the Nodal Ministry sent a letter on 06.11.2018 to lodge an FIR and file a recovery suit. Pursuant to this, the present suit was filed which is well within the limitation. It has further been submitted that the FIR has also been lodged. Learned counsel submits that the jurisdiction is to be exercised at the stage of under Order 7 Rule 11 CPC is confined to the looking at the plaint along with the documents annexed as the plaint is to be read as a whole and the cause of action has specifically been pleaded and the suit has been filed well within the limitation.

14. There is no quarrel to settled proposition that for deciding an application under Order 7 Rule11 CPC; the Court has only to look at the plaint and the documents filed. However, be that as it may, the

court cannot forget its basic duty to ascertain whether the facts have been pleaded in such a manner so as to circumvent the limitation as prescribed under the law. It is quite strange that the irregularities happened in 2005, 2006 and the proceedings have been initiated now. At the relevant time, the plaintiff was admittedly only at the level of General Manager. It cannot be believed that General Manager himself took all the decisions for initiating the department inquiry and filing the litigation. This must have the approval of the Board of Directors. In 2015, the issue raked up when the matter was sent to the CVC for vigilance clearance for further promotion of the plaintiff. Even thereafter, the file has been sent from one place to another and the department took four years in deciding that the recovery suit has to be filed. The limitation as provided under the law accrues a definite advantage/right to all parties, as in absence of limitation on the institution of litigation; the sword will remain hanging over everyone's head indefinitely. It is also pertinent to mention here that the limitation only finishes the right of recovery; however it does not extinguish the right of the plaintiff. It is a clear case where the plaintiff which is a government organization has been sleeping over the matter and took around 14 years in reaching to a conclusion that it was a defendant who was the guilty party. For such a long lapse on the part of the plaintiff, the Court cannot allow to institute the proceeding against the defendants by way of clever drafting.

15. I consider that the present suit is barred by the limitation and the present application is disposed of as allowed.

<u>CS(OS) 75/2021, I.A. 8694/2022</u>

16. Accordingly, in view of the directions in I.A. 10246/2021, the present suit along with pending application stands dismissed.

DINESH KUMAR SHARMA, J

FEBRUARY 23, 2024/*Pallavi*