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

+ **C.R.P. 138/2023 & CM APPL. 28142/2023**

SANJEEV KUMAR

.....Petitioner

Through: Mr. Amit Vohra, Ms. Simran & Mr.
Vikas Jassi, Advocates.

versus

TARACHAND

.....Respondent

Through: Mr. Anil Kumar Batra & Mr. Shashi
Bala, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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08.11.2024

CM APPL. 28144/2023

1. The Application under *Section 151 of the Code of Civil Procedure, 1908* has been filed on behalf of the Petitioner seeking condonation of 26 days in re-filing the present Petition.

2. For the reasons and grounds stated in the present Application, the Application is allowed. The delay of 26 days in re-filing the Petition is hereby condoned.

3. The Application is disposed of.

C.R.P. 138/2023

4. The Revision Petition under *Section 115 of the Code of Civil Procedure, 1908* (hereinafter referred to as "CPC, 1908") has been filed on behalf of the Petitioner-Defendant *vide* which the Application under *Order VII Rule 11 (d) read with Section 151 of CPC, 1908* filed on behalf of the Petitioner-Defendant, has been dismissed.

5. It is submitted that the Suit for Recovery of Rs. 30,10,000/- along



with future and *pendente lite* interest, had been filed on behalf of the Respondent-Plaintiff on the averments that the Petitioner-Defendant had jointly purchased the agricultural land measuring 60 kanal 16 1 marla, comprising Khewat No. 83, Khatoni No. 84, Khasra No. 139, 4 (6-17), 7 (8-3), Khewat No. 458 Khatoni No. 498, Khasra No. 139, 8 (7-7), 9 (7-7) and 10 (7-7) situated in Revenue Estate of Village Patti Kalyana, Tehsil Samalkha, District Panipat, Haryana *vide* Sale Deed dated 17.03.2015, for a total consideration of Rs. 48,42,820/-. The entire sale consideration was paid by the Respondent-Plaintiff through Cheques bearing No. 236864 dated 28.0.2005 for Rs. 8,07,137/- made in favour of Shri Himanshu Chawla, bearing No. 236865 dated 28.02.2005 for Rs. 8,07,137/- made in favour of Shri Parth Chawla, bearing No. 236863 dated 28.02.2005 for Rs. 16,14,273/- made in favour of Shri Parveen Chawla and bearing No. 236862 dated 28.02.2005 for Rs. 16,14,273/- made in favour of Smt. Bala Chawla, who were the sellers of the property in question.

6. It is further submitted that after the purchase of the property in question, it was mutually agreed between the Respondent-Plaintiff and the Petitioner-Defendant in the presence of the family members that the Petitioner-Defendant would pay his share of the sale consideration to the Respondent-Plaintiff along with *bank rate interest* within a period of 12 years of the Sale Deed i.e. on or before March, 2017.

7. It was further agreed that though the share of the Petitioner-Defendant came to be Rs. 24,21,410/- and he would pay only Rs. 14,21,410/- to the Respondent-Plaintiff as a rebate was given to him at the time of Oral Partition and he became the owner in respect of Killa No. 1, 2, 9 and 10 out of the purchased land.



8. The Petitioner-Defendant has paid only Rs. 4,00,000/- during this period till 2017, out of his share along with bank rate interest that was payable. When the Respondent-Plaintiff demanded the balance amount of Rs. 10,00,000/- along with interest, the Petitioner-Defendant sought 18 months' time for clearing the balance amount along with interest. Even after the expiry of said 18 months, the Petitioner-Defendant has not paid the balance amount, but he filed a false and frivolous Application before the Assistant Collector/Tehsildar for the partition of said agricultural land.

9. Therefore, the Respondent-Plaintiff by way of his Suit has sought the recovery of Rs. 30,10,000/- along with future and *pendente lite* interest @ 24% per annum from the date of filing of the Suit till realisation.

10. The Petitioner-Defendant had moved an Application *under Order VII Rule 11(d) read with Section 151 of CPC, 1908* for rejection of the Suit of the Respondent-Plaintiff essentially on the ground that the Suit for Recovery could have been filed within a period of three years from 28.02.2005 in terms of *Article 19 to the Schedule of the Limitation Act, 1963*. The Suit of the Respondent-Plaintiff *is barred by limitation*.

11. The learned Additional District Judge *vide* impugned Order dated 06.02.2023 observed that at the stage of *Order VII Rule 11 of CPC, 1908*, only the averments made in the Plaint have to be considered. It has been specifically averred that the amount due from the Petitioner-Defendant was to be returned within a period of 12 years and, therefore, the Suit *per se* cannot be said to be barred by limitation. Accordingly, the Application under *Order VII Rule 11(d) read with Section 151 of CPC, 1908* was been dismissed *vide* the impugned Order dated 06.02.2023.

12. Aggrieved by the impugned Order dated 06.02.2023, the



Petitioner/Defendant has preferred the present Revision Petition to challenge the Order dated 06.02.2023 *vide* which *the Application under Order VII Rule 11(d) read with Section 151 of CPC, 1908.*

13. It is submitted on behalf of Revisionist-Defendant that according to the Respondent-Plaintiff, the share of the Petitioner-Defendant is Rs. 24,21,410/-, but it was agreed that he would pay only Rs. 14,21,410/- to the Respondent-Plaintiff as a rebate was given to him at the time of Oral Partition by virtue of which he became the owner in respect of Killa No. 1, 2, 9 and 10 out of the purchased land. A sum of Rs. 4,00,000/- was claimed to have been paid to him, but the date and mode of payment of such amount has not been mentioned.

14. It is argued that in whichever way the averments made in the Plaint may be considered, the Suit of the Respondent-Plaintiff has been filed after almost 17 years from 2005 and the same is patently barred by limitation and is liable to be rejected.

15. *Learned counsel for the Respondent-Plaintiff* has argued that there are specific averments in the Plaint that the amount was liable to be paid within a period of 12 years i.e., upto March, 2017. Article 27 of the Schedule to the Limitation Act, 1963 provides that the limitation of recovery for the amount shall be three years from the date when it becomes due and payable. The Suit had been filed on 03.01.2022, which is well within the period of limitation of three years from March, 2017 after calculating the period to be excluded on account of COVID-19 Pandemic.

16. There is no infirmity in the impugned Order dated 06.02.2023 and the present Revision Petition is liable to be dismissed.

17. **Submissions heard.**



18. To appreciate the rival contentions, it would be pertinent to refer to the Plaint, wherein the Respondent-Plaintiff has stated that admittedly the Petitioner-Defendant had jointly purchased the agricultural lands *vide* Sale Deed dated 17.03.2015 for a total consideration of Rs. 48,42,820/-. The entire sale consideration was paid by the Respondent-Plaintiff through Cheques to the sellers on 28.02.2005. It was mutually agreed between the Respondent-Plaintiff and the Petitioner-Defendant in the presence of the family members, that the Petitioner-Defendant would pay his share of the sale consideration to the Respondent-Plaintiff along with *bank rate interest* within a period of 12 years of the Sale Deed i.e., on or before March, 2017.

19. Pertinently, in Paragraph-5 of the Plaint, it has also been mentioned that though the share of the Petitioner-Defendant was Rs. 24,21,410/-, but it was agreed that he would pay only Rs. 14,21,410/- to the Respondent-Plaintiff as a rebate was given to him at the time of Oral Partition by virtue of which he became the owner in respect of Killa No. 1, 2, 9 and 10 out of the purchased land. It is also claimed that Rs. 4,00,000/- was paid by the Petitioner-Defendant to the Respondent-Plaintiff from time to time upto March, 2017.

20. During the course of arguments, it was submitted that this amount of Rs. 4,00,000/- was paid long time back till 2007 by way of bank transfers.

21. Pertinently, the pleadings in regard to the terms of the Agreement between the Petitioner-Defendant and the Respondent-Plaintiff are patently vague. The rate of interest has been stated to be *bank interest rate*, but there is no reason given as to why at the time of this Agreement, there was no specific rate of interest agreed between the parties. This aspect assumes significance in view of the submissions made that a rebate was given to the



Petitioner-Defendant by the Respondent-Plaintiff on account of an Oral Partition and it was agreed that the Petitioner-Defendant shall pay a sum of Rs. 14,21,410/- to become owner in respect of Killa No. 1, 2, 9 and 10, out of the purchased agricultural land. These averments are absolutely vague and do not specify about the Oral Partition or about the date of Oral Partition or give any explanation for rebate being granted to the Petitioner-Defendant. Rather, what emerges from the comprehensive reading of the plaint is that the lands in question were purchased jointly by the parties. Subsequently, pursuant to an Oral Partition the date of which is not specified, the parties agreed that the Petitioner-Defendant would pay a sum of Rs. 14,21,410/- and become owner of the specified lands. Apparently, there was another transaction, the details of which are missing from the Plaint, under which the Petitioner-Defendant had agreed to pay Rs. 14,21,410/-.

22. It is also relevant to mention that according to the counsel for the Respondent-Plaintiff, a sum of Rs. 4,00,000/- was given in 2007 by way of bank transfers. Again, none of these facts are pleaded in the Plaint. The pleadings are absolutely vague which also assume importance as no Legal Notice had been served upon the Petitioner-Defendant before institution of the Suit.

23. Pertinently, the trigger for institution of the Suit is the Application filed before the Assistant Collector/Tehsildar for partition of the agricultural lands in question. The entire contents of the Plaint are absolutely vague and do not disclose the specific dates from where the limitation can be calculated. This is more so as no date of part payment has been indicated in the Plaint.

24. No doubt, it has been rightly argued on behalf of the



Respondent-Plaintiff that the period of limitation would be three years from the date when the amount becomes due and payable in terms of Article 27 to the Schedule of the Limitation Act, 1963, but for this, there should have been the specific averments.

25. As already discussed above, the averments made in the Plaint are absolutely vague with no specific details from which the limitation may be calculated.

26. Accordingly, the present Revision Petition is allowed and the impugned Order 06.02.2023 dismissing the *Application under Order VII Rule 11 (d) read with Section 151 of CPC, 1908* filed by the Petitioner-Defendant is hereby set aside. The Suit of the Respondent-Plaintiff is hereby dismissed.

27. The present Revision Petition along with pending Application is disposed of.

NEENA BANSAL KRISHNA, J

NOVEMBER 8, 2024

S.Sharma