

D/L
Item No. 2
31.07.2025
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**FMA 552 of 2025
With
CAN 2 of 2025**

**Sonic Thermal Pvt. Ltd.
-Vs.-
Ashok Kumar Dutta**

*Mr. Ratnanko Banerjee,
Mr. Aniruddha Chatterjee,
Mr. Aditya Kanodia,
Ms. Urmila Chakraborty,
Mrs. Sristi Barman,
Ms. V. Newar,*

...for the appellant.

*Mr. Probal Mukherjee,
Ms. Shebatee Datta,*

...for the respondent.

Read order dated July 22, 2025.

Mr. Banerjee, learned Senior Advocate representing the appellant/defendant has taken a point of limitation of the plaintiff's claim. He says that the defendant had made an application under Order 7 Rule 11(d) of the Code of Civil Procedure before the Learned Trial Judge for rejection of the plaint on the ground that the suit is barred by limitation. The learned Judge dismissed such application. On revision, the High Court did not interfere with the conclusion of the learned Trial Court but passed the following direction:-

"I am informed that trial court has already framed issue as to whether suit is barred by limitation or not and whether plaintiff has any cause of action to file the suit or not. In the event of framing such issues trial court shall decide those issues at the time of final adjudication of the suit on the basis of oral and documentary evidence and without being influenced by any observation made by this court, since I have not gone into the merits of the case".

The defendant's Special Leave Petition against such revisional application was not entertained by the Hon'ble Apex Court.

Mr. Banerjee, contends that the learned Trial Court was obliged to decide the issue of limitation afresh at the time of final trial on the basis of oral and documentary evidence as was directed by the High Court, by the aforesaid order which was not interfered with by the Hon'ble Apex Court.

Mr. Mukherjee, learned Senior Advocate, representing the respondent/plaintiff says that since the learned Trial Court had already once rejected the defendant's argument of limitation of the plaintiff's claim, which rejection order was not interfered with by the High Court in the revisional application, the learned Trial Court was perfectly justified in recording that he had already decided the point of limitation. Therefore, the contention of the plaintiff on this score, has no merit. The appeal should be heard out on merits.

From a perusal of the judgment and decree impugned before us, we find that Issue No. 3 framed by the learned Trial Judge, was the issue of limitation or the suit being barred by any other statutory provision. The learned Judge took up Issue Nos. 1, 2 and 3 together for consideration and decision. On the issue of limitation, the learned Judge held as follows:-

"The Ld. Advocate for the defendant had contended that the suit is barred by limitation. It was the submission of the Ld. Advocate for the defendant that there was no acknowledgement by the defendant as to the alleged claims of the plaintiff after September 21, 2011 except the payment of Rs. 98,14,918/- on 30th September, 2021.

In the application for rejection of the plaint being I.A. No. 1 of 22 dated 16/09/2020 the defendant had raised the same issue of maintainability of the suit on the ground of limitation. This court vide order dated 19/07/2021 had rejected the application filed by the defendant and held that the suit has been filed within three years from the date of cancellation of the contract. The court also held that the present suit is not simpliciter a money suit but is a suit for non-payment of R.A bills and therefore Section 18 of the Limitation Act has to be read conjointly with article 113 of the Limitation Act. The order dated 19/07/2021 has not been set aside by the Hon'ble Court. Accordingly, this court holds that the suit having been filed within three years from the date of cancellation of the contract is well within time and is not barred by limitation. Thus issue No. 1, 2 & 3 are decided in favour of the plaintiff."

We, therefore, see that the learned Trial Judge did not decide the issue of limitation afresh on the basis of oral and documentary evidence adduced in the suit as was directed by the High Court in the order passed on the revisional application. The learned Trial Judge merely recorded that he had already decided the issue and therefore he did not decide the issue once again. This, in our opinion, is non-compliance with the order of the High Court. Hence, solely on this ground, we set aside the judgment and decree under appeal and remand the matter to the learned Trial Court to take a fresh decision only on the point of limitation of the plaintiff's claim. We clarify that the re-hearing will be limited to the point of limitation. For that purpose, if the learned Judge deems fit and proper he may call for further evidence from the parties.

We further clarify that we have not adjudicated any other issue involved in this appeal. Indeed we have not

adjudicated the issue of limitation also. We leave it to the learned Trial Court to decide that issue. In the event the plaintiff succeeds on the point of limitation, the defendant will be entitled to prefer an appeal from the decree on all points including the point of limitation since we have not touched any of the points on merits in this appeal. In the event the defendant succeeds on the point of limitation, naturally, the plaintiff's suit will be dismissed and then the plaintiff will be at liberty to challenge the same in accordance with law.

We have not considered the appellant's application under Order 41 Rule 27 of the Code of Civil Procedure in view of the opinion we have formed as recorded above.

The case records be forthwith sent back to the learned Trial Court. For that purpose the appellant shall put in special messenger costs with the department within seven days.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Om Narayan Rai, J.)