



\$~102

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

+ **CM(M) 63/2025**

MOHIT KARAK

.....Petitioner

Through: Mr. Sagar Shivam Jaiswal,
Advocates.

versus

ASHOK KUMAR KHETAN

.....Respondent

Through: Mr. Satyam Shivaach, Mr. Aditya
Jain, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **14.01.2025**

CM APPL. 2013/2025 (exemption)

Allowed, subject to all just exceptions.

This application stands disposed of.

CM(M) 63/2025 & CM APPL. 2014/2025 (stay)

1. This is a petition under Article 227 of the Constitution of India, impugning the order dated 19.11.2024, passed by the learned District Judge (COMM) -09, Central District, Tis Hazari Courts in Civil Suit No. 74/2024.
2. The respondent had filed a suit for recovery against the petitioner herein based on certain invoices and ledger accounts. Petitioner filed written statement and also filed an application under Order VII Rule 11 CPC seeking rejection of plaint on the ground of limitation.
3. According to the petitioner, the cause of action arose on 25.04.2018 and therefore, the suit was barred by limitation.



4. The learned counsel for respondent, however, states that petitioner issued a cheque dated 08.07.2018 towards payment of part liability. It has been further submitted that in the Complaint Case filed under Section 138 of Negotiable Instruments Act 1881, the petitioner had tendered a demand draft dated 10.03.2021 for sum of Rs. 3,00,000/- on 24.03.2021 to the respondent in lieu of the dishonoured cheque. It is further submitted that subsequently the petitioner pleaded guilty and was sentenced vide order dated 25.07.2022 and in terms of the sentence awarded by the Court, the petitioner paid a sum of Rs. 3,65,000/- through demand draft dated 23.08.2022 to the petitioner i.e. Rs. 3,00,000/- towards the cheque amount and Rs. 65,000/- towards interest and litigation charges. It is thus submitted that the suit having been filed on 14.07.2023 was within the period of limitation.

5. The Trial Court, while dismissing the application under Order VII Rule 11 CPC, observed that the question of limitation is both mix question of law and fact and it would be appropriate to frame the issue with regard to the limitation and the same would be decided at a final stage.

6. The Trial Court vide order dated 03.12.2024 has framed the issue regarding the limitation and placed the onus to prove the same on the defendant. It is submitted on behalf of petitioner that Trial Court has erroneously observed that the question of limitation was mix question of fact and law. It is submitted that in the facts and circumstances of the case, the said question can be decided on the basis of undisputed facts and the issue of limitation being a legal issue and can be decided forthwith as a preliminary issue.

7. No doubt, where the question of limitation is a mixed question of law and fact, the same cannot be decided without taking evidence on record.



However, it is not necessary that in all cases, the question of limitation would be a mixed question of law and fact. The Supreme Court in the case of **Indian Evangelical Lutheran Church Trust Association vs. Sri Bala & Co.** [2025 INSC 42], in paragraph 8.8 held as under:-

“8.8 ...it is stated that normally the question of limitation would be a mixed question of law and fact. Hence, usually, on a reading of the plaint it is not rejected as being barred by the law of limitation. However, the above is not an inflexible rule.”

8. During submissions, learned counsel of respondent has not disputed that the facts before the Trial Court are not disputed and, therefore, the question of limitation in the present case is purely legal issue and can be decided without requirement of leading evidence.

9. The Court has to decide as to whether the suit has been filed within a period of limitation period based on undisputed facts.

10. Thus, the question of limitation already framed can be disposed of as a preliminary issue being purely a legal issue, which can be decided without requirement of any evidence. Petition is, therefore, disposed of with direction to the Trial Court to take up the issue of limitation as a preliminary issue and decide the same as per law.

RAVINDER DUDEJA, J

JANUARY 14, 2025/vp