



2025:DHC:2948



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 02.04.2025
+ **C.R.P. 15/2019, CM APPL. 3112/2019**

NIKUNJ KUMAR LOHIA

.....Petitioner

Through: Mr. K. Bhimraj Achary, Adv.

versus

BAL KRISHAN GARODIA & ORS

.....Respondents

Through: Mr. Raja Chatterjee, Ms. Riya
Dutta, Mr. Piyush Sachdeva Advs.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.:** (Oral)

1. The present Petition has been filed by the Petitioner under Section 115 of Code of Civil Procedure, 1908 ('CPC') seeking to challenge an order dated 18.08.2018 passed by Ld. ADJ, Saket District Courts, Delhi [hereinafter referred to as 'Impugned Order']. By the Impugned Order, the Application under Order VII Rule 11 of CPC filed by the Petitioner (Defendant before the learned Trial Court) has been dismissed.
2. The record reflects that a Coordinate Bench of this Court had by an order dated 01.02.2019 directed that there will be a stay of proceedings before the learned Trial Court and thereafter the matter has continued as is.
3. Learned Counsel for the Petitioner raises only one issue. Learned Counsel submits that the plaint failed to disclose any cause of action. It is contended by learned Counsel that the recovery of the amount is pursuant



2025:DHC:2948



to an award which was passed in the year 1983. Thus, it is contended that the plaint, which is filed in the year 2010, is barred by limitation. It is further contended that there is no cause of action to file the suit.

4. Learned Counsel for the Respondents makes two submissions. Learned Counsel submits that so far as concerns the cause of action, the same has been detailed in paragraph 27 of the plaint. It is contended that even though the award was passed in 1983, thereafter there were several *inter se* litigations between the parties, which were affirmed by a decree passed by the High Court and confirmed by the Supreme Court in the year 1992.

4.1 Learned Counsel for the Respondent further submits that the cause of action arose on 23.03.2010 when the Respondent/Plaintiff had made payment of Rs.22,88,151/- to Bank of Baroda as full and final settlement but the Petitioner failed to reimburse the said amount in terms of the Awards dated 03.10.1983.

4.2 In addition, learned Counsel submits that the present Petition is barred by limitation. He submits that the limitation to file the Revision Petition is 90 days. Learned Counsel seeks to rely upon Article 131 of the Limitation Act, 1963 in this behalf. Learned Counsel thus submits that the Revision Petition was filed in January, 2019 against order dated 18.03.2017 and is thus, barred by limitation. However, no application seeking condonation of delay is filed by the Petitioner.

5. Concededly, the Revision Petition has been filed in January, 2019 against an order dated 18.03.2017 passed by the learned Trial Court. The time period of ninety (90) days would have expired on 16.06.2017,



2025:DHC:2948



however, the Revision Petition was filed in January, 2019 which is clearly beyond the stipulated time.

6. However, this Court has examined the matter on merits as well. The plea taken by the Petitioner that there is no cause of action or that the cause of action arose in the year 1983 and the plaint is barred by law being beyond the period prescribed for limitation. Hence, the Application under Order VII Rule 11 of the CPC has to be allowed by the learned Trial Court.

7. The Supreme Court in *Dahiben v. Arvinbhai Kalyanji Bhanusali*¹ has held that remedy under Order 7 Rule 11 of the CPC is an independent and special remedy, where the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conduct a trial. However, the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to. The Supreme Court has clarified that:

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

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23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

¹ (2020) 7 SCC 366



2025:DHC:2948



23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.”

[Emphasis Supplied]

8. The plaint as filed by the respondent/plaintiff is a suit for recovery of an amount of Rs. 31,11,858/- along with interest. It has been specified in the plaint that the cause of action arose when the Award was made a decree by the Kolkata Court and was confirmed by the Hon'ble Supreme Court on 30.11.1992, Thereafter, on 23.03.2010, the Respondents paid an amount of Rs. 22,88,151/- to the Bank of India, and the part of the Petitioners to make payment for a sum of Rs. 22,88,151/- to the Respondents. The relevant extract of paragraph 27 of the plaint, which sets out the cause of action is reproduced below:

“27. That the cause of action arose in favour of the plaintiff and against the defendants on 25.9.80 when Sh Harish Prasad Lohia and Sh Narayan Prasad Garodia executed the indemnity in favour of the plaintiff. Cause of action again arose against the defendants on 3.10.83 when the award was made and published directing the defendants to keep the plaintiff fully indemnify and harmless in all respects with respect to the liability of New Era Textiles amongst others. Cause of action further arose when the said award was made a decree by the Kolkata Court on 21.9.84 and the decree was confirmed by the Hon'ble Supreme Court on 30.11.92. The cause of action for the instant suit arose when various suits were filed by the Bank of India against the plaintiff for recovery of money and the defendants failed to pay the same despite being impleaded as parties in the said suits. Cause of action arose when the defendants had failed to pay the outstanding dues of the Bank of India. The same thereafter arose on day to day basis by reason of the failure on the part of the defendants to make payment of the dues of the Bank of India. The cause of action thereafter arose on 23.3.2010 when the plaintiff in full and final settlement paid Rs. 22,88,151/- to the Bank of India but the defendants have failed to reimburse the said amount to the plaintiff in terms of the award dated 3rd October 1983, The plaintiffs states that the cause of action arose on day to day basis by reason of failure on the part of the defendants to make payment for a sum of Rs. 22,88,151/-to the



2025:DHC:2948



plaintiffs.”

[Emphasis Supplied]

9. The Respondent/Plaintiff has stated above that the cause of action has arisen on 23.03.2010 when the settlement amounts were paid to the bank by Respondent No.1. It is the case of the Respondent No.1 that it is only once that the amount was paid, the indemnity that the Respondents were seeking to invoke would become applicable. Thus, the plaint which is filed on 20.03.2013 is not barred by limitation.

10. This aspect of the matter has also been extensively dealt with by the learned Trial Court. The learned Trial Court found that the reference to the arbitration award is more in the nature of emphasis of the liability of the party, but right to relief is derived from the filing of the suit of recovery and payments made. Thus, affirming the fact that the plaint filed in the year 2013 was within limitation. It is apposite to extract the relevant part of the Impugned Order in this regard:

“5) The length and breadth of the cause of action that the plaintiff sets up against the defendants was traversed in order to ascertain as to whether the averments setup disclose a cause of action, a right to relief against the defendants or as per the contention of the defendant no. 1 is bereft of any cause of action for the right to relief as prayed for the plaintiff categorically alleges that shri Hari Prasad Lohia and shri. Narayan Prasad Garodia, the predecessors in interest of the defendants had availed of certain credit facility from Bank of India in the name of New Era textiles the proprietorship concern of the wife of the plaintiff and the plaintiff had signed letters/agreements of guarantee and they had executed indemnity bond in favour of the plaintiff to keep the plaintiff indemnified with respect to all liabilities including those liabilities prior to 27.4.80 arising from the operation of the business of New Era Textile. The plaintiff further alleges that the plaintiff has paid to the Bank of India an amount of Rs.22,88,151/- towards settlement of the suits for recovery instituted against the plaintiff and this liability was in fact to be discharge by the defendants as successor to the estate of shri. H.P. Lohia and shri. Narayan Prasad Garodia in terms of the consent Award



2025:DHC:2948



dated 30.10.1983 which has been made rule of the court by the Honourable High Court of Kolkata. The Award is referred to in order to draw the liability of the successor in interest of shri. H.P. Lohia and shri. Narayan Prasad Garodia and not by way of seeking an execution of the Award which has been declined by Honourable High Court of Kolkata. The Award pegged the rights, liability and obligations of the parties. The right to relief has arisen from the filing of the suit of recovery of the money instituted by the Bank of Baroda which was settled to the satisfaction of the Bank by the plaintiff. In terms of the rights, liabilities and obligations of the parties determined under the Arbitration Award, this amount paid by the plaintiff, the plaintiff alleges to be in discharge of the liability of the defendants. The reference to the Arbitration Award is more in the nature of a historical emphasizing upon the present liabilities of the parties but the right to relief is derived from the filing of suits for recovery and payments made in settlement thereof. The plaint therefore is not liable to be rejected as the averments disclose a cause of action for a right to relief in favour of the plaintiff and against the defendants.”

[Emphasis Supplied]

11. The revisionary jurisdiction of this Court is limited. The Court is not required to examine the factual aspect of the matter, the Court only has power to see if the learned Trial Court has failed to exercise jurisdiction vested in it or exercise jurisdiction which is not vested or has acted with illegal or material irregularity.

11.1 The Supreme Court in the case of *Ambadas Khanduji Shinde v. Ashok Sadashiv Mamurkar*² clarified that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of CPC, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. It has been held as follows:

“14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual

² (2017) 14 SCC 132



2025:DHC:2948



findings while exercising jurisdiction under Section 115 of the Civil Procedure Code. It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. In the facts on hand, the courts below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial court.

[Emphasis Supplied]

12. In view of the foregoing, this Court finds no infirmity with the Impugned Order which would merit interference under Section 115 of CPC.
13. The present Petition is accordingly dismissed. Interim Order stands vacated. The pending Application stands closed.
14. It is however clarified that the Court has not expressed any opinion on the merits of the controversy. The rights and contentions of the parties are left open.
15. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

APRIL 2, 2025/jn

Click here to check corrigendum, if any