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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 23.04.2025***

+ C.R.P. 114/2024 & CM APPL. 17584/2024

MADHU NAHAR

.....Petitioner

Through: Mr. Vineet Malhotra, Ms. Reeva Jain
Malhotra and Mr. Ankit Gupta,
Advocates.

versus

JAGJIT KAUR ANAND

.....Respondent

Through: None.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition seeks to challenge an order dated 03.02.2024 passed by the learned SCJ-cum-RC, West District, Tis Hazari Courts, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, an Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] stood dismissed by the learned Trial Court.

2. The record reflects that on the last date of hearing, the Respondent has sought an adjournment to make arguments. None appears on behalf of the Respondent today.

2.1 A Coordinate Bench of this Court had by an order dated 21.03.2024 directed that the proceedings before the learned Trial Court shall remain in abeyance. In view of the pendency of the order directing stay of the proceedings before the learned Trial Court, this Court deems it apposite to take the matter for hearing and final disposal today.

3. Learned Counsel for the Petitioner has raised one contention before



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the Court. He submits that the Plaint is barred by limitation.

3.1 Learned Counsel for the Petitioner submits that as per the plaint, the cause of action arose in the year 2010, and thus, the suit which was filed in the year 2023 is barred by law. He seeks to rely upon the provisions of Article 113 of Schedule 1 of the Limitation Act, 1963.

4. This Court has examined the Impugned Order as well as the Application under Order VII Rule 11, CPC.

5. In the Application under Order VII Rule 11, CPC, the grounds as raised by the Petitioner in Paragraph 2 is that the true and correct facts were not disclosed and the action taken by ICICI bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as “SARFAESI Act”] was not disclosed. Paragraph 3 states that the present suit is barred by law. It is apposite to extract Paragraphs 2 and 3 of this Application in this behalf:

“2. That the plaintiff is very well aware that the ICICI Bank had already started the actions under the Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and has not disclosed the this true and correct facts in its plaint and approached this Hon’ble court by concealing the other material facts from this Hon’ble court.

3. That the present suit of the plaintiff is barred by Law. Hence the suit of the plaintiff be dismissed as per the provisions of order 7 rule 11 C.P.C with heavy cost.”

6. No other averment with regard to the submission on the Plaint being barred by law have been set out in the Application. Paragraph 8 of the Application however discusses Section 34 of the SARFAESI Act and sets out that in terms of Section 34 of the SARFAESI Act, the jurisdiction of the Civil Court is barred. Thus, clearly from a perusal of the Application itself,



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the ground that has been argued by the learned Counsel for the Petitioner today, was not even set out in the Application under Order VII Rule 11 of CPC.

7. In any event, this Court has examined the plaint as well. The plaint sets out that the cause of action arose on several dates and is a continuing one and lastly arose on the date the Notice was served to the Defendants for vacating the suit property. Concededly, this Notice for terminating the License of the Petitioner/Defendant No.1 is dated 29.12.2021 and the plaint has been filed in the year 2023. Even as per the Petitioner, the plaint was filed within the 3 years as set out therein.

8. It is a settled law that limitation is a mixed question of law and fact. The Supreme Court in the case of *P. Kumarakurubaran v. P. Narayanan*¹, while relying on *Saleem Bhai v. State of Maharashtra*² and *Sopan Sukhdeo Sable v. Charity Commr.*³, has held that the issue of limitation cannot be adjudicated at the threshold stage under Order VII Rule 11 CPC and thus rejection of the plaint on the ground of limitation without permitting the parties to lead evidence is legally unsustainable. The relevant extract of the *P. Kumarakurubaran* case is below:

“10. Having heard the learned counsel for the parties and upon careful perusal of the pleadings, the material on record, and the impugned judgment, we find it necessary to examine whether the rejection of the plaint under Order VII Rule 11(d) CPC was justified in the facts and circumstances of the present case. It is to be pointed out at this juncture that though the respondents/defendants sought to reject the plaint on two grounds - valuation of the suit and limitation - the High Court rejected the plaint solely on the ground that it was time-barred. Accordingly, we shall

¹ 2025 SCC OnLine SC 975

² (2003) 1 SCC 557

³ (2004) 3 SCC 137



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confine our consideration in this appeal to the issue of limitation.

[Emphasis Supplied]

8.1 The Supreme Court in *P. Kumarakurubaran* case, in addition, discussed various judgments and held that when the issue of limitation involves disputed questions of facts or hinges on the date of knowledge, such an issue cannot be decided at the threshold. Where on a meaningful reading of the plaint, a cause of action is disclosed, it cannot be dismissed at the stage of an order under Order VII Rule 11 of the CPC. It was held as follows:

"12.1. However, we are of the considered view that the issue as to whether the appellant had prior notice or reason to be aware of the transaction at an earlier point of time, or whether the plea regarding the date of knowledge is credible, are matters that necessarily require appreciation of evidence. At this preliminary stage, the averments made in the plaint must be taken at their face value and assumed to be true. Once the date of knowledge is specifically pleaded and forms the basis of the cause of action, the issue of limitation cannot be decided summarily. It becomes a mixed question of law and fact, which cannot be adjudicated at the threshold stage under Order VII Rule 11 CPC. Therefore, rejection of the plaint on the ground of limitation without permitting the parties to lead evidence, is legally unsustainable."

12.2. In this regard, we may usefully refer to the following decisions of this Court, which have consistently held that when the question of limitation involves disputed facts or hinges on the date of knowledge, such issues cannot be decided at the stage of Order VII Rule 11 CPC:

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(ii) *Salim D. Agboatwala v. Shamalji Oddhavji Thakkar*

"11. As observed by this Court in *P.V. Guru Raj Reddy v. P. Neeradha Reddy* [(2015) 8 SCC 331 : (2015) 4 SCC (Civ) 100], the rejection of plaint under Order 7 Rule 11 is a drastic power conferred on the court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only



at a particular point of time, the same has to be accepted at the stage of considering the application under Order 7 Rule 11.

12. Again as pointed out by a three-Judge Bench of this Court in **Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar** [(2018) 6 SCC 422 : (2018) 3 SCC (Civ) 524], the plea regarding the date on which the plaintiffs gained knowledge of **the essential facts, is crucial for deciding the question whether the suit is barred by limitation or not. It becomes a triable issue and hence the suit cannot be thrown out at the threshold.**

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14. But a defendant in a suit cannot pick up a few sentences here and there from the plaint and contend that the plaintiffs had constructive notice of the proceedings and that therefore limitation started running from the date of constructive notice. In fact, the plea of constructive notice is raised by the respondents, after asserting positively that the plaintiffs had real knowledge as well as actual notice of the proceedings. In any case, the plea of constructive notice appears to be a subsequent invention.”

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14. In *Saleem Bhai v. State of Maharashtra* [*Saleem Bhai v. State of Maharashtra*, [(2003) 1 SCC 557] it was held with reference to Order 7 Rule 11 of the Code that:

‘9. ... the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power ... at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage....’ (SCC p. 560, para 9).

15. In *ITC Ltd. v. Debts Recovery Appellate Tribunal* [*ITC Ltd. v. Debts Recovery Appellate Tribunal*, (1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

16. “The trial court must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious and meritless in



the sense of not disclosing a clear right to sue, it should exercise its power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, [it has to be nipped] in the bud at the first hearing by examining the party searchingly under Order 10 CPC.” (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467], SCC p. 468.)

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19. In Sopan Sukhdeo Sable v. Charity Commr. [(2004) 3 SCC 137] this Court held thus : (SCC pp. 146-47, para 15)

‘15. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.’

20. For our purpose, clause (d) is relevant. It makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. For the said purpose, it is the duty of the person who files such an application to satisfy the court that the plaint does not disclose how the same is in time. In order to answer the said question, it is incumbent on the part of the court to verify the entire plaint. Order 7 Rule 12 mandates where a plaint is rejected, the court has to record the order to that effect with the reasons for such order.”

8. On the same lines, **this Court in Church of Christ Charitable Trust & Educational Charitable Society v. Ponniammam Educational Trust [(2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612], observed as follows : (SCC pp. 713-15, paras 10-12)**

22. It is well-established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of the suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order 7 Rule 11 CPC is ruled out. In the present case, the assertion in the plaint is that the



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appellant verily believed that its claim was being processed by the regional office and the regional office would be taking appropriate decision at the earliest. That belief was shaken after receipt of letter from the Senior Manager of the Bank, dated 8-5-2002 followed by another letter dated 19-9-2002 to the effect that the action taken by the Bank was in accordance with the rules and the appellant need not correspond with the Bank in that regard any further. This firm response from the respondent Bank could trigger the right of the appellant to sue the respondent Bank. Moreover, the fact that the appellant had eventually sent a legal notice on 28-11-2003 and again on 7-1-2005 and then filed the suit on 23-2-2005, is also invoked as giving rise to cause of action. Whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents.”

[Emphasis Supplied]

9. A plaint reading of the plaint shows that the Respondent/Plaintiff has filed a Suit for Permanent and Mandatory Injunction contending that the suit property is a self-acquired property and was purchased by Respondent/Plaintiff and her husband for a sum of Rs.40,00,000/- by virtue of a registered sale deed dated 06.05.2010. The Respondent/Plaintiff had permitted the Petitioner/Defendant No.1 and her family to reside in the suit property as a licensee and after the death of the husband of the Petitioner/Defendant No.1, the Petitioner/Defendant No.1 was requested by the Respondent/Plaintiff to vacate the suit property, however, she failed to do so. It is further stated in the plaint that for the purposes of the suit property, a bank loan was also taken. The plaint further states that since the Petitioner/Defendant No.1 was not vacating the suit property, a legal notice was sent on 29.12.2021 for terminating the license of the Petitioner/Defendant No.1. Thereafter, since the suit property was not vacated, a suit was filed.

9.1 It is further set out in the plaint that the cause of action although first



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arose in the year 2010 has arisen thereafter and lastly arose when notice for vacating the suit property was sent however, the property was not vacated.

9.2 It is apposite to extract paragraph 12 of the plaint in this regard, which is set out below:

"12. That the cause of action to file the present suit arose in favour of Plaintiff and against the Defendants firstly in the year 2010 when the plaintiff purchased the suit property and permit Sh Rakesh Nahar and his family to reside in the suit premises the cause of action further arose on each and every date when the Plaintiff requested the Defendants to vacate the suit property and it further arose when the Plaintiff served a notice to the Defendants for vacating the premises. The cause of action is still subsisting and continuing one."

[Emphasis supplied]

10. A perusal of the Application under Order VII Rule 11, CPC shows that the Petitioner/Defendant No.1 has in essence reproduced his defence therein. It is settled law that the defence cannot be looked at while examining an Application under Order VII Rule 11, CPC.

11. The learned Trial Court examined the plaint as well as the Application under Order VII Rule 11, CPC and found based on the contents of the plaint that various triable issues were raised by the Petitioner/Defendant No.1 which cannot be decided at the threshold and thus has dismissed the Application under Order VII Rule 11, CPC.

12. In view of the above discussion and settled position of law, this Court finds no merit in the present Petition which would require interference by this Court.

13. The Petition is accordingly dismissed. Pending Application hereby stands closed.

14. It is, however, made clear that the order passed today will not



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preclude the Petitioner from raising all contentions before the learned Trial Court. The rights and contentions of both the parties are left open in this behalf.

15. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

APRIL 23, 2025/pa/r

Click here to check corrigendum, if any