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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 10th February, 2025*+ **C.R.P. 164/2023 & CM APPL. 33254/2023**

SUBHASH WADHWAPetitioner
Through: Mr. Varun Mehlawat and
Mr. Dhananjay Mehlawat,
Advs.

versus

KULDEEP SINGHRespondent
Through: Counsel (Appearance not
given)

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The petitioner/ defendant has filed the present petition challenging the order dated 08.05.2023 (hereafter '**impugned order**'), passed by the learned Trial Court, pursuant to which the application filed by the petitioner under Order VII Rule 11 of the CPC in CS SCJ 705/2021 (hereafter '**subject suit**'), was dismissed.

2. Briefly stated, the land admeasuring 1 bigha 1 biswa, comprised in Khasra no. 48/20 Min, situated at Gali No. 2, Krishna Nagar, Border Road, Village Mamurpur, Narela, Delhi (hereafter '**suit property**') was purchased through a Sale Deed

Signature Not Verified

Signed By: HARMINDER KAUR
Signing Date: 04.03.2025
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dated 08.02.2000, which got registered in the name of both petitioner and respondent.

3. The petitioner had filed a civil suit bearing no. 326/2001 for perpetual injunction alleging that the respondent had fraudulently inserted his name in the Sale Deed dated 08.02.2000 in regard to the suit property. The said suit was also filed against one Sh. Gurpreet Singh, alleging that he had fraudulently inserted his name in the General Power of Attorney dated 22.05.2000 in regard to the land admeasuring 7 biswas, 350 sq. yards bearing Khasra No. 48/11 Min, situated at Krishna Nagar, Village Mamurpur, Narela Delhi, which was registered in the name of the petitioner as well as Gurpreet Singh. The learned Trial Court dismissed the suit on merits *vide* order dated 13.05.2014.

4. Thereafter, the respondent had filed the subject suit in the year 2021 before the learned Trial Court for declaration, permanent & mandatory injunction *qua* the suit property by claiming himself as the owner. During the pendency of the said suit, the petitioner filed the application under Order VII Rule 11 of the CPC, for rejection of the respondent's plaint on grounds that the same is filed with a delay of more than 20 years.

5. The learned Trial Court dismissed the said application *vide* the impugned order dated 08.05.2023 and held that the contents of the plaint suggest that the plaintiff/respondent was under genuine impression about the pendency of a similar suit and therefore, Section 14 of the Limitation Act, 1963, shall be applicable.



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6. Aggrieved by the same, the petitioner has preferred the present petition seeking revision of the impugned order.

7. The learned counsel for the petitioner submits that the learned Trial Court failed to consider the fact that the plaint of the respondent in the subject suit as well as the written statement filed by the respondent in Suit bearing No. 326/2001 makes it apparent that the respondent was well aware of the alleged fraudulent act of the petitioner in the year 2001, and still chose to file the subject suit in the year 2021, thereby leading to a delay of 20 years.

8. He submits that the cause of action for the suit arose in the year 2001 itself, and therefore, the subject suit filed by the respondent in the year 2021 is barred by limitation.

9. He submits that the learned Trial Court did not appreciate the settled legal principles of law that the plaint is liable to be rejected under Order VII Rule 11 of the CPC, if it is apparent from the face of the record that the same is barred by limitation.

10. He submits that the learned Trial Court failed to consider the fact that the earlier suit filed by the petitioner was rejected on merits and not on jurisdictional error, and that in this regard, the Hon'ble Apex Court has clarified that the 'other cause of like nature' is *ejusdem generis* to 'defect of jurisdiction' therefore, the passing of impugned order has resulted in grave miscarriage of justice.

11. He further submits that a coordinate bench of this Court has already addressed the issue at hand *vide* order dated



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16.10.2023 in C.R.P. 36/2023 filed by the petitioner challenging the order dated 13.12.2022 passed by the learned Trial Court in a separate civil suit filed by Gurpreet Singh, bearing No. CS SCJ 1335/ 2021, seeking declaration, permanent and mandatory injunction of the land admeasuring 7 biswas, 350 sq. yards bearing Khasra No. 48/11 Min, situated at Krishna Nagar, Village Mamurpur, Narela Delhi, claiming himself to be the owner of the land.

12. Heard learned counsel for the parties and perused the records.

13. The petitioner has preferred the present petition against the impugned order dated 08.05.2023 passed by the learned Trial Court, pursuant to which, the application filed by the petitioner for rejection of the subject suit was dismissed.

14. In a similar petition filed by the petitioner bearing No. C.R.P. 36/2023, a coordinate bench of this Court was pleased to dismiss the civil suit seeking declaration, permanent and mandatory injunction of the land admeasuring 7 biswas, 350 sq. yards bearing Khasra No. 48/11 Min, situated at Krishna Nagar, Village Mamurpur, Narela Delhi, filed by Gurpreet Singh after a delay of over 20 years.

15. The said revision petition was filed by the petitioner challenging the order dated 13.12.2022 passed by the learned Trial Court in CS SCJ 1335/ 2021, pursuant to which the application of the petitioner for rejection of plaint, as in the instant case, was dismissed, essentially on the ground that





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Section 14 of the Limitation Act, 1963 would be applicable to the facts of the case.

16. The coordinate bench of this Court while noting that the statements made by Gurpreet Singh in the plaint in CS SCJ 1335/2021 as well as his written statement in the former suit bearing No. 326/2001 filed by the petitioner, held that despite being aware of the fact that the cause of action to file the said suit arose in the year 2001, the same has been filed belatedly after a delay of 20 years. The Hon'ble bench held that the suit filed by Gurpreet Singh could not have been covered under Section 14 of the Limitation Act, 1963 and was liable to be dismissed on grounds of delay under Order VII Rule 11 of the CPC.

17. The Hon'ble bench also took into consideration various judgments passed by the Hon'ble Apex Court and held that the application of Section 14 of the Limitation Act, 1963 can only be pleaded if the previous suit filed by one of the parties was dismissed due to jurisdictional error and not for any other reasons. It is not disputed that the suit bearing no. 326/2001 for perpetual injunction, filed by the petitioner was dismissed on merits *vide* order dated 13.05.2014.

18. The operative portion of the order dated 16.10.2023 in C.R.P. 36/2023 is reproduced hereunder:

"21. Before delving into the impugned order, it is apposite to reiterate the settled principle regarding the rejection of plaint under Order VII Rule 11 of the CPC. The said aspect is not a res integra rather prevail as the settled principle of law, where the Trial Court need to adjudicate the issue on the basis of the averments made in the plaint."



23. It is well settled that the Court, while deciding such an application must have due regard only to the statements made in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement.

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25. On perusal of the aforesaid paragraphs of the plaint, it is clear that the cause of action to file the suit arose in the year 2001 and the suit filed by the petitioner suffers from an inordinate delay of 20 years.

26. The paragraph no. 7 of the plaint clearly suggests that the respondent had filed their written submissions in the said suit filed by the petitioner, therefore, the issue of limitation does arise in the suit filed by the respondent as he was well aware of the dispute in 2001 itself.

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31. The aforesaid paragraphs of the impugned order clearly suggests that the learned Court below erred in stating that the issue regarding the limitation cannot be adjudicated in an application filed under Order VII Rule 11 of the CPC, as the said aspect is covered under Section 14 of the Act.

32. The perusal of the impugned order also makes it clear that the learned Trial Court agreed with the contention of the respondent and did not reject the suit on the grounds of the said delay rather deems it fit to apply Section 14 of the Act, which provided exemption to the plaintiff/respondent.

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39. In the instant case, the said provision cannot be attracted primarily due to two reasons. Firstly, the former suit filed by the petitioner was dismissed on merits and not on the jurisdictional grounds and the same cannot be taken as a ground as the said suit was filed by the petitioner and not the respondent. Secondly, the paragraph no. 7 of their own plaint clearly indicates that they were well aware of the dispute in the year 2001 and therefore, cannot claim bona fide mistake on their part.

40. It is well settled that the object with regard to the applicability of the said provision is to provide protection to a litigant against the bar of limitation when he institutes a proceeding which by nature of a technical defect cannot be decided on merits, however, the previous case filed by the petitioner was decided and dismissed on merits and not on the question of jurisdiction.



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41. Therefore, the learned Trial Court erred in applying the said provision on the suit filed by the respondent, thereby, leading to dismissal of the application filed under Order VII Rule 11 of the CPC.

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44. It is no doubt that Section 5 of the Act, is broader in its sweep than Section 14 of the Act, in the sense that a number of widely different reasons can be advanced and established to show that there was sufficient cause in not filing the appeal or the application within time. The ingredients in respect of Sections 5 and 14 of the Act, are different. The effect of Section 14 of the Act, is that in order to ascertain what is the date of expiration of the 'prescribed period', the days excluded from operating by way of limitation, have to be added to what is primarily the period of limitation prescribed.

45. On perusal of the plaint filed by the respondent, it is also clear that the respondent never prayed for condonation of delay in filing the suit, rather the learned Trial Court has applied Section 14 of the Act, on its own during the adjudication of the application filed by the petitioner under Order VII Rule 11 of the CPC. Therefore, the issue of condonation of delay under Section 5 of the Act, cannot be raised.

46. In light of the aforementioned paragraphs, this Court finds merit in the arguments advanced by the petitioner. Therefore, this Court is of the view that the learned Trial Court erred in not appreciating the law laid down by the Hon'ble Supreme Court and failed to apply the same while adjudicating upon the petitioner's application under Order VII Rule 11 of the CPC.

47. In view of the above, this Court arrives at the conclusion that the suit filed by the respondent cannot be covered under Section 14 of the Act, and is liable to be rejected on grounds of inordinate delay of 20 years.

48. Therefore, there is infirmity in the impugned order passed by the learned Trial Court and this Court deems it fit to exercise its powers prescribed under Section 115 of the CPC, and accordingly the impugned order dated 13th December, 2022, passed by the Trial Court, in the Civil Suit bearing no. 1335/2021, is hereby set aside.

49. In view of the above discussions of facts and law, the present petition is allowed and the suit filed by the respondent which is pending before the learned Trial Court stands dismissed.

50. Accordingly, the instant petition stands disposed of."

(emphasis supplied)



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19. The present petition is filed in similar circumstances as in C.R.P. 36/2023 and the issue is squarely covered by the order dated 16.10.2023 passed therein, by the coordinate bench of this Court.

20. It is pointed out that an appeal was preferred before the Hon'ble Apex Court, challenging the said order of the coordinate bench, in Special Leave to Appeal (C) No. 4705/2024, however the same came to be dismissed *vide* order dated 22.03.2024.

21. In view of the above, the present petition is allowed.

22. Pending application(s) stand disposed of.

23. It is to be noted that this order will not affect any other proceedings between the parties.

AMIT MAHAJAN, J

FEBRUARY 10, 2025