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

\+ RFA 71/2024

1. SANJAY KUMAR GUPTA
   S/o Sh. J.S. Gupta
   Flat No. 64, Ashirwad apartments
   Plot No. 11, Sec-12, Dwarka,
   New Delhi – 110075

2. HARMESH KUMAR SINGHLA
   S/o Late Om Prakash Singla
   A-57, Sector- 19A, Dwarka,
   New Delhi - 110075 .....Appellants

Through: Mr. Rajesh Rai, Mr. Rohan Rai and Ms. Amisha Ray, Advocates

versus

1. ANOOP MALIK
   S/o Ram Krishna Malik
   RZF-926, Rajnagar II,
   Palam Colony, New Delhi- 110045 .....Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

O R D E R

% **25.03.2026**

1. The present Appeal under Section 96 read with Order XLI Rule 1 and Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been filed against the Judgment dated 06.10.2023 passed by the learned Additional District Judge-01, Delhi, whereby the Plaint of the Appellants in **CS DJ ADJ No. 257/2023**has been rejected under Order VII Rule 11 CPC,***on the ground of limitation.***

2. ***Briefly stated***, the Appellant No. 1, Sh. Sanjay Kumar Gupta and Appellant No. 2, Sh. Harmesh Kumar Singhla, had *instituted a Suit for Recovery of Rs.31,65,000/- alongwith pre-suit interest of Rs.21,10,333/- against the Respondent, Sh. Anoop Malik.*

3. As per the Plaintiffs/Appellants, the Respondent/Defendant owed them a sum of Rs.26,15,000/-, which he was unable to return owing to financial hardship. On persistent persuasion of thePlaintiffs/Appellants, the Defendant/Respondent offered to sell his plot bearing No. F-73, admeasuring 182.21 sq. yds., situated at Village Rathdhana, Sector-26, 26-A, 33 & 34, Sonipat, Tehsil and District Sonipat, Haryana*(hereinafter referred to as "*Suit Property*")* to the Plaintiffs/Appellants, for a total sale consideration of Rs.29,00,000/-and requested adjustment of Rs.26,15,000/- towards part-sale consideration.

4. Accordingly, an **Agreement to Sell dated 10.08.2017** was executed between the parties, wherein the Defendant/Respondent acknowledged the receipt of Rs.26,15,000/- as part sale consideration. It was agreed in *Para 7* of the Agreement to Sell, that in case the Defendant was unable to execute the Sale Deed/necessary sale papers in favour of the Plaintiffs/Appellants, he shall pay double the amount of the earnest money. Furthermore, in *Para 10* of the Agreement to Sell, it was agreed that the Agreement to Sell was irrevocable and was final and binding on the parties. The Defendant undertook to deliver the vacant physical possession of the Suit Property, at the time of full and final payment and registration of the concerned documents, in favour of the Plaintiffs/Appellants or their nominee.

5. As per the aforesaid Agreement to Sell, it was also agreed between the parties that there was an outstanding amount of Rs.8,00,000/- of M/s

Indiabulls Estate Limited; and that the Plaintiffs/Appellants would pay the balance sale consideration of Rs.2,85,000/- alongwith a sum of Rs.2,50,000/- as settlement money to the Defendant/Respondent, who shall deposit the outstanding amount of M/s Indiabulls Estate Limited related to the aforesaid Suit Property, on or before 05.10.2017 from his own funds and resources.

6. Thereafter, the Defendant demanded an additional Rs.15,000/- from the Plaintiffs/Appellants to clear all the dues of M/s Indiabulls Estate Limited, to which the Plaintiffs agreed. Hence, the Plaintiffs paid the balance sale consideration of Rs.2,85,000/- and Rs.2,65,000/- totalling Rs.5,50,000/- *vide* Cheque No. 002085 dated 29.10.2017, which was duly encashed by the Defendant. However, the Defendant failed to transfer the title of the Suit Property or to return the money paid by the Plaintiffs.

7. On the failure of the Defendant to carry out his obligations under the Agreement to Sell dated 10.08.2017, the Plaintiffs filed a *Complaint dated 26.10.2018 before the SHO, Sector-23, Dwarka, New Delhi,* requesting registration of FIR against the Defendant for offencesofcheating, criminal breach of trust, fraud and other penal provisions. The Complaint was registered *vide* Diary No. 10813/5880 and was forwarded to DCP, Dwarka, New Delhi for initiation of legal action. The Complaint was thereafter, transferred to P.S. Southern District, Sonipat, Haryana.

8. During the course of investigation, the Defendant was summoned; and it was revealed by him that M/s Indiabulls Estate Limited was to hand over the possession of the Suit Property in 2012;however till 2016, the possession was not handed over.

9. Therefore, *'Police Officers Multi-State Cooperative Housing Society*

Limited' had filed *Consumer Case No. 555/2015 titled 'Police Officers Multi-State Cooperative Housing Society Limited vs. M/s Indiabulls Estate Limited & Ors.',*for damages,interest and penalty on delayed possession, which was pending before the National Consumer Disputes Redressal Commission (*hereinafter referred to as* 'NCDRC').

10. The Defendant, *vide* his submissionsdated 27.02.2019in Requisition No. Cm Off/N/2019/024344, undertook to pay the remaining amount to M/s Indiabulls Estate Limited and to execute the Sale Deed in favour of the Plaintiffs, after the final decision of the Consumer Case pending before the NCDRC. The Defendant, however, continued to delay the execution of the Sale Deed on the pretext of pendency of the Consumer Case before the NCDRC.

11. In February, 2021, the Plaintiffs came to know that the Consumer Case had already been disposed of on 08.12.2020, on account of an amicable settlement between the Society and M/s Indiabulls Estate Limited. The Plaintiffs immediately approached the Defendant, but he failed to execute the Sale Deed or return the amount paid by them.

12. *Hence, the Suit for Recovery of Rs.31,65,000/- alongwith interest at the rate of 18% per annum, together with pre-Suit interest of Rs.21,10,333/- came to be filed by the Plaintiffs on 14.03.2023.*

13. The **Written Statement**was filed by the Defendant, wherein it was claimed that the Suit was liable to be dismissed under Order VII Rule 10 CPC as the dispute pertained to an immovable property situated at Sonipat. It was further claimed that the Plaintiffs were running an illegal Committee business and that all the participants of the Committee had to give some security for participating therein.

14. The Agreement to Sell was nothing but a kind of security, which the Defendant was asked to sign for participation in the committee. The alleged payment of Rs.5,50,000/- *vide* cheque was towards the payment of Committee money, and it is for this reason that in the Receipt, there was no mention of flat number/any specific property details.

15. An **Application under Order VII Rule 11 CPC** was thereafter, filed by the Defendant, on the ground that the Suit was barred by limitation. The learned Additional District Judge, *vide* the impugned Judgment dated **06.10.2023**, observed that the alleged money was received on 10.08.2017 whereas the Suit had been filed on 14.03.2023, i.e.after expiration of more than five years; and accordingly*, the Suit was held to be barred by limitation and the Plaint was rejected.*

16. Aggrieved by the said Judgment, the *present Appeal has been preferred.*

17. The ***grounds of challenge*** are that after the execution of the Agreement to Sell dated 10.08.2017, the Defendant had acknowledged the execution of the said Agreement and his liability thereunder, in his statement/submission dated 27.02.2019made before the Police authority, which constitutes a written acknowledgement of liability within the meaning of Section 18 of the Limitation Act, 1963. Therefore, limitation would stand extended in view of acknowledgment as contemplated under Section 18 of the Limitation Act, 1963.

18. The learned Trial Court has erroneously placed reliance on Section 14 of the Limitation Act, 1963, though no such plea or submission, is borne out from the record.

19. It is further contended that as per Article 113 of the Limitation

Act,1963 the period of limitation commences from the date when the right to sue accrues, which, in the present case, accrued on the Defendant's refusal to execute the Sale Deed, after the disposal of the Consumer Case on 08.12.2020.Thus,the learned Trial Court erred in not appreciating that the Suit is governed by Article 113 of the Limitation Act, 1963.

20. Reliance has been placed on *Rukhmabai vs. Lala Laxminarayan& ors.*, AIR 1960 SC 335; *Shakti Bhog Food Industries Ltd. vs. Central Bank of India & Anr*, (2020) 17 SCC 260; and *Ram Lal Puri vs. Gokalnagar Sugar Mills Co*(1967) 3 DLT 231, to contend that the impugned Judgment is liable to be set aside.

21. It is urged that the learned Trial Court failed to consider the Plaint and documents in their entirety, while deciding the Application under Order VII Rule 11 of the Code of Civil Procedure, 1908.

22. *Per contra*, ***learned counsel for the Respondent*** has vehemently contested the Appeal and has submitted that the learned Additional District Judge has rightly observed that the Suit was patently barred by limitation.

23. It is further submitted that, even otherwise, the Suit pertains to an illegal transaction, as is evident from the averments regarding the Committee business; and the Suit is, therefore, not maintainable and has been rightly rejected.

24. *Both parties have reiterated substantially similar pleas, in their Written Submissions.*

Submissions heard and record perused.

25. The present Appeal arises from an order rejecting the Plaint under Order VII Rule 11 CPC, 1908. It is well settled that, while adjudicating an application under Order VII Rule 11 CPC, the Court is required to confine

its examination to the averments contained in the Plaint and the documents relied upon therein; the defence taken in the written statement is wholly irrelevant.

26. It is equally well settled that rejection of a Plaint on the ground of limitation is permissible only where the suit is, *ex facie*, barred by limitation upon a meaningful reading of the plaint, and no triable issue arises.

27. ***The essential question for consideration is whether the Plaint was liable to be rejected as time-barred, under Order VII Rule 11 CPC.***

28. The learned Additional District Judge proceeded on the premise that the money was received by the defendant on 10.08.2017 and that the period of limitation of three years would commence from that date, thereby rendering the Suit, instituted on 14.03.2023, barred by limitation.In doing so, reliance has been placed on *Article 24 of the Schedule to the Limitation Act, 1963,* which reads as under:

	Description of suit	Period of limitation	Time from which period begins to run
24.	*For money payable by the defendant to the Plaintiff for money received by the defendant, for the Plaintiff's use*	*Three years*	*When the money is received.*

29. A plain reading of Article 24 shows that it governs cases of "money received", such as money paid by mistake, money collected by an agent, or money received for the use of another. ***It has no application where money is paid as consideration under a contract and is subsequently, sought to be recovered on account of breach thereof.***The reliance on Article 24 is misplaced, as the present claim arises out of breach of an Agreement to Sell

and not from money received by the Defendant for the Plaintiffs' use.

30. In such cases, where a claim arises out of breach of contractual obligations,it would be governed by Article 55***(breach of contract)*** of the Schedule to the Limitation Act, 1963, which prescribes a period of three years from the date when the contract is broken. In a situation where no specific Article is found to be applicable, the matter would fall within the ambit of the ***residuary provision*** contained in Article 113 thereof.

31. The expression *"when the right to sue accrues"* has been considered by the Hon'ble Supreme Court in *Rukhmabai v. Lala Laxminarayan* AIR 1960 SC 335, which held that the right to sue does not arise merely from the date of the transaction, but only when there is a ***clear and unequivocal*** threat to infringe the right asserted by the Plaintiff. It is only then that limitation begins to run.

32. This principle finds reiteration in *Shakti Bhog Food Industries Ltd. v. Central Bank of India, (2020)*17 SCC 260, where the Hon'ble Supreme Court observed that the expression *"when the right to sue accrues"* occurring in Article 113 of the Limitation Act is distinct and wider in its amplitude, than the expression *"when the right to sue first accrues"* used in other Articles, such as Article 58.

33. *The Apex Court emphasised that for the purpose of Order VII Rule 11 of the CPC, the "right to sue" cannot be isolated to the earliest possible date of a dispute, but must be seen in the context of a "**clear and unequivocal threat**" to the plaintiff's rights. Crucially, the Apex Court held that whether such a right has accrued, is often a fact-intensive inquiry that must be gathered from a holistic and meaningful reading of the entire plaint, rather than from stray sentences or specific dates extracted out of context.*

Consequently, if the accrual of the cause of action ***is linked to a series of*** *correspondences or the final refusal of a party to perform an obligation, the issue becomes a mixed question of fact and law that cannot be summarily adjudicated at the threshold stage of rejection of the plaint.*

34. In the present case, a meaningful reading of the Plaint shows that the case of the Plaintiffs/Appellants is not one of simpliciter recovery of money, but arises out of an Agreement to Sell dated 10.08.2017 and the subsequent events. It is evident that the sum of Rs.31,65,000/- was not money received by the Defendant for the Plaintiffs' use, but constituted the sale consideration paid by the Plaintiffs to the Defendant, under the said Agreement to Sell.

35. The Plaint states that the Defendant/Respondent, *vide* written communication dated 27.02.2019, disclosed before the Investigating Officer the pendency of the proceedings before the Hon'ble NCDRC, acknowledged his liability in writing, and undertook to fulfil his obligations upon disposal of the Consumer case. It is further averred that the said proceedings were disposed of on 08.12.2020; however, the Defendant thereafter, failed and refused to perform his obligation.If the averments in the Plaint are taken to be correct, as they must be at this stage, the cause of action cannot be said to have arisen in 2017.

36. The Plaint states that the Defendant, *vide* written submission dated 27.02.2019 bearing Requisition No. Cm Off/N/2019/024344 before the police authorities, whereby he undertook to pay the remaining amount to Indiabulls Estate Limited and to execute the sale deed in favour of the plaintiffs upon the final decision of the Consumer case, pending before the National Consumer Disputes Redressal Commission. Such a written

undertaking, signed by the defendant before a public authority, *prima facie* satisfies the requirements of Section 18 of the Limitation Act, 1963, as a written acknowledgment of liability in respect of a subsisting right. If established at trial, a fresh period of limitation would commence from 27.02.2019.

37. Even otherwise, the claim would*prima facie* fall for consideration under Article 55of the Schedule to the Limitation Act, 1963, or, in the alternative, under the residuary Article 113 thereof, both of which prescribe a period of three years.

38. The Suit instituted on 14.03.2023, cannot be said to be *ex facie* barred by limitation if computed from 08.12.2020. In any event, the precise point of *accrual of the right to sue is a mixed question of fact and law* and is not amenable to determination at the stage of Order VII Rule 11 CPC.

39. The Plaintiffs would further be entitled to the benefit of the COVID exclusion, from 15.03.2020 till 28.02.2022, in view of the directions of the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020; and the present Suit filed on 14.03.2023 would, on this count as well, be within limitation.

40. The learned Trial Court, in proceeding solely on the date of receipt of money and applying Article 24 of the Limitation Act, has failed to consider the true nature of the transaction, the cause of action as disclosed in the Plaint, as well as the subsequent conduct of the Defendant, including the acknowledgment of liability.

41. Even if the question of limitation is arguable, it cannot be said, on a meaningful reading of the Plaint, that the suit is *ex facie* barred. The determination of the exact point of accrual of the right to sue, would require

examination of facts and cannot be conclusively adjudicated at this stage. The issue of limitation, therefore, raises a triable question, and the rejection of the plaint under Order VII Rule 11 CPC, is unsustainable.

42. The Respondent's objection of illegality, is a matter of defence and not for consideration under Order VII Rule 11 CPC. *The plaint, read as a whole, discloses a cause of action and does not prima facie appear to be barred by any law.*

43. The plaint discloses a case of an Agreement to Sell, payment of a total consideration of Rs. 31,65,000/- (including Rs. 26,15,000/- adjusted towards the sale consideration and Rs. 5,50,000/- paid subsequently), failure of the defendant to execute the sale deed, acknowledgment of liability in February 2019, and a final refusal after December, 2020. On these averments, it cannot be said that the plaint does not disclose a cause of action or that it is barred by any law within the meaning of Order VII Rule 11 CPC.

44. For the foregoing reasons, the impugned judgment dated 06.10.2023 passed by the learned Additional District Judge-01, Delhi, is set aside.

45. The suit is restored to its original number and be tried in accordance with law.

46. It is clarified that nothing observed herein shall be construed as an expression of any final opinion on the merits of the case, including the plea of limitation or the defence set up by the Defendant, all of which shall be adjudicated independently by the learned Trial Court, upon appreciation of the evidence.

47. The appeal is accordingly allowed. The parties are directed to appear before the learned District Judge, Dwarka, within 2 months, who shall proceed with the trial in accordance with law.

48. Pending Applications, if any, are disposed of, accordingly.

NEENA BANSAL KRISHNA, J

MARCH 25, 2026/*N*