IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 18th OF SEPTEMBER, 2025

CIVIL REVISION No. 339 of 2025

PREM MOTERS PVT. LTD. REG. OFFICE AT KANWAL COMPLEX ROAD A.G. OFFICE GWALIOR THROUGH MANAING DIRECTO

Versus

RAJENDRA UPADHYAY

Appearance:

Shri A.V.Bhardwaj - Advocate for the applicant.

Shri Gaurav Samadhiya- Advocate for the respondent.

ORDER

This civil revision under Section 115 C.P.C. has been filed against order dated 06/03/2025 passed by Twentieth Civil Judge, Junior Division, Gwalior in Regular Civil Suit No.781-A/2022 by which an application filed by applicant under Order 7 Rule 11 of C.P.C. has been rejected.

2. The facts necessary for disposal of present revision, in short, are that respondent has filed a suit for declaration and mandatory injunction to the effect that two blank cheques were given to defendant, which were not to be encashed and those cheques were to be kept by defendant in his safe custody. Later on, it was found that defendant with a dishonest intention has filled up the entries and has got the cheques bounced and instituted a proceeding under Section 138 of Negotiable Instruments Act (in short, "N.I.Act") and accordingly, during the cross-examination of defendant, it was alleged by defendant that cheques were issued in discharge of legal

liability and accordingly, the cause of action for filing civil suit arose on 03/08/2022. The suit was filed for declaration that two cheques No.091287 and 091288 were given to defendant only for keeping the same in safe custody and on the basis of those cheques, defendant is not entitled to receive any amount and a mandatory injunction was also prayed that defendant be directed to return the blank cheques back to plaintiff and in case if cheques are not returned, then they should be treated as cancelled.

3. An application under Order 7 Rule 11 of C.P.C. was filed on the ground that not only the suit does not disclose any cause of action, but it is also barred by time.

4. By the impugned order dated 06/03/2025, the Trial Court has rejected the application filed under Order 7 Rule 11 of C.P.C. on the ground that present plaint does not appear to have been cleverly drafted to avoid question of limitation.

5. Challenging the order passed by Trial Court, it is submitted by counsel for applicant that in the plaint itself, respondent/plaintiff has specifically stated that he came to know about the fact that defendant/applicant is claiming that cheques in question were issued in discharge of legal liability only when certain statements were made during cross-examination and thus, the cause of action arose on 03/08/2022. It is submitted that it is clear from paragraph 9 of plaint that plaintiff has suppressed the fact of pendency of proceeding under Section 138 of N.I.Act. It is further submitted that plaintiff has deliberately and cleverly suppressed the fact of filing of MCRC Nos.10130/2016 and 10131/2016, which were

dismissed by this Court by order dated 06/10/2016 and SLP against both the orders were also dismissed. Thus, it is submitted that plaintiff/respondent was aware of fact that cheques issued by him were presented before bank, and they have been returned back and proceeding under Section 138 of N.I.Act has been initiated. It is further submitted that while arguing MCRC Nos.10130/2016 and 10131/2016, it was also alleged by respondent that cheques were not issued in discharge of debt or legal liability, therefore, it is submitted that at least cause of action arose on the day when respondent/plaintiff came to know for the first time that cheques were presented before the bank, and they have been returned back. It is further submitted that it is well established principle of law that for deciding an application filed under Order 7 Rule 11 of C.P.C. the Court must do meaningful reading of entire plaint and if it is found that plaint has been cleverly drafted with an intention to give an illusory impression about the maintainability of plaint, then such plaint should be rejected at the first instance.

6. *Per contra*, the civil revision is vehemently opposed by counsel for respondent. It is submitted that only when applicant/defendant stated in his cross-examination that cheques were issued in discharge of legal liability, then respondent/plaintiff came to know that cheques issued by him, have been misused and thus, the suit is within the period of limitation. It is further submitted by counsel for respondent that question of limitation is mixed question of fact and law, and therefore, it can be decided only after recording of evidence and relied upon the judgment passed by Supreme Court in the

case of **P. Kumarakurubaran Vs. P. Narayanan & Ors. decided on 29/04/2025 in Civil Appeal No.5622/2025**.

7. Heard the learned counsel for the parties.

8. Before considering the civil revision, this Court would like to consider the scope of Order 7 Rule 11 of C.P.C.

9. The Supreme Court in the case of ***Raghwendra Sharan Singh v. Ram Prasanna Singh*, (2020) 16 SCC 601** has held as under:-

> **"6.4.** In *T. Arivandandam* [*T. Arivandandam* v. *T.V. Satyapal*, (1977) 4 SCC 467] , while considering the very same provision i.e. Order 7 Rule 11 CPC and the decree of the trial court in considering such application, this Court in para 5 has observed and held as under: (SCC p. 470)
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> > "*5.* We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif 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, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits."
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> **6.5.** In *Church of Christ Charitable Trust & Educational Charitable Society* [*Church of Christ Charitable Trust & Educational Charitable Society* v. *Ponniamman Educational Trust*, (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612] , this Court in para 13 has observed and held as under: (SCC p. 715)

> "*13.* While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue."

6.6. In *ABC Laminart (P) Ltd.* v. *A.P. Agencies* [*ABC Laminart (P) Ltd.* v. *A.P. Agencies*, (1989) 2 SCC 163] , this Court explained the meaning of "cause of action" as follows: (SCC p. 170, para 12)

> "*12.* A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

6.7. In *Sopan Sukhdeo Sable* [*Sopan Sukhdeo Sable* v. *Charity Commr.*, (2004) 3 SCC 137] in paras 11 and 12, this Court has observed as under: (SCC p. 146)

> "*11.* 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.

12. The trial court must remember that if on a meaningful and 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 the power under Order 7 Rule 11 of the Code 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 of the Code. (See *T. Arivandandam* v. *T.V. Satyapal* [*T. Arivandandam* v. *T.V. Satyapal*, (1977) 4 SCC 467] .)"

6.8. In *Madanuri Sri Rama Chandra Murthy* [*Madanuri Sri Rama Chandra Murthy* v. *Syed Jalal*, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] , this Court has observed and held as under: (SCC pp. 178-79, para 7)

"*7.* The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the

averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

6.9. In *Ram Singh* [*Ram Singh* v. *Gram Panchayat Mehal Kalan*, (1986) 4 SCC 364] , this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.

7. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 CPC to the facts of the case in hand and the averments in the plaint, we are of the opinion that both the courts below have materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11 CPC. It is required to be noted that it is not in dispute that the gift deed was executed by the original plaintiff himself along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the plaintiff. It is the case of the plaintiff that the gift deed was a showy deed of gift and therefore the same is not binding on him. However, it is required to be noted that for approximately 22 years, neither the plaintiff nor his brother (who died on 15-12-2002) claimed at any point of time that the gift deed was showy deed of gift. One of the executants of the gift deed, brother of the plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. It was the appellant herein-original defendant who filed the suit in the year 2001

for partition and the said suit was filed against his brothers to which the plaintiff was joined as Defendant 10. It appears that the summon of the suit filed by the defendant being TS (Partition) Suit No. 203 of 2001 was served upon Defendant 10-plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e. the period from 1981 till 2001/2003, the suit property was mortgaged by the appellant herein-original defendant and the mortgage deed was executed by the defendant. Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation. Therefore, considering the decisions of this Court in *T. Arivandandam* [*T. Arivandandam* v. *T.V. Satyapal*, (1977) 4 SCC 467] and others, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 CPC."

10. The Supreme Court in the case of ***Rajendra Bajoria v. Hemant Kumar Jalan*, (2022) 12 SCC 641** has held as under:-

13. No doubt that, it is rightly contended on behalf of the plaintiffs that, only on the basis of the averments made in the plaint, it could be ascertained as to whether a cause of action is made out or not. It is equally true that for finding out the same, the entire pleadings in the plaint will have to be read and that too, at their face value. At this stage, the defence taken by the defendants cannot be looked into.

14. We may gainfully refer to the observations of this Court in *T. Arivandandam* v. *T.V. Satyapal* [*T. Arivandandam* v. *T.V. Satyapal*, (1977) 4 SCC 467] : (SCC p. 470, para 5)

> "*5.* We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court

> repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. *The learned Munsif 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, he should exercise his power under Order 7 Rule 11CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC.* An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:
> "It is dangerous to be too good."

11. It is true that for deciding an application filed under Order 7 Rule 11 C.P.C. only plaint averments or documents filed alongwith plaint are to be seen. However, when the Court comes to a conclusion that the plaint has been cleverly drafted to give an illusory impression about the maintainability of suit, then such vexatious litigation must be nipped at very first instance.

12. In the present case, in paragraph No.9 of plaint, plaintiff/respondent has specifically admitted that only during the course of

cross-examination, plaintiff came to know that defendant has treated the cheques to have been issued in discharge of legal liability. Plaintiff has cleverly suppressed the fact of institution of proceedings under Section 138 of N.I.Act. Plaintiff has cleverly suppressed fact that the said proceedings were challenged by him before the High Court by filing MCRC Nos.10130/2016 and 10131/2016 under Section 482 of Cr.P.C. and in those proceedings also, it was claimed by him that cheques were never issued in discharge of legal liability. Although, it is the contention of counsel for respondent/plaintiff that those petitions filed under Section 482 of Cr.P.C. were rejected with an observation that the defence taken by respondent/plaintiff is a disputed question of fact which can be established only after the evidence is led but at present, we are not concerned about the merits of the case. At present, we are concerned about the fact that what was date on which plaintiff/respondent came to know for the first time about the use/misuse of his two cheques in question. Since the order-sheets of Trial Court before whom the proceedings under Section 138 of N.I.Act are pending, have not been filed, therefore, this Court is not aware of the fact that when plaintiff/respondent appeared before trial Magistrate for the first time, but it is clear that MCRC Nos.10130/2016 and 10131/2016 were filed by respondent/plaintiff on 17/08/2016 and both applications were dismissed by order dated 06/10/2016. According to applicant even SLP filed by respondent/plaintiff was dismissed. Thus, one thing is clear that at least on 17/08/2016 i.e. the date on which MCRC Nos.10130/2016 and 10131/2016 were filed, it was within the knowledge of respondent/plaintiff that his

cheques have been used/misused and they were presented and have been returned back by bank. If respondent/plaintiff was of the view that cheques which were issued by him were not in discharge of legal liability but were given to applicant/defendant with an intention to keep them in his safe custody, then the cause of action had already arisen and the suit should have been filed within a period of three years from thereafter whereas in the present case, the suit has been filed in the month of August, 2022.

13. So far as the question as to whether, a plaint can be rejected under Order 7 Rule 11 of C.P.C. on the ground of limitation is concerned, counsel for respondent/plaintiff is correct in submitting that generally question of limitation is a mixed question of fact and law, however, the Supreme Court in the case of ***Indian Evangelical Lutheran Church Trust Association vs. Sri Bala & Co.*** decided on 8/1/2025 in C.A. No.1525 of 2023 has held that on plain reading of plaint if suit is found to be barred by time then it can be dismissed under Order 7 Rule 11 CPC.

14. Accordingly, it is clear that upon meaningful reading of entire pleadings of plaint, if it is clear as noon day that the suit is barred by time, then the suit can also be dismissed under Order 7 Rule 11 of C.P.C. on the ground of limitation.

15. Thus, it is held that since, respondent/plaintiff was already aware of fact that cheques in question have already been used by applicant/defendant and had presented the same before Bank and upon return of those cheques, applicant/defendant has already filed a proceeding under Section 138 of N.I.Act, then the suit should have been filed within a period

of three years from the date of gaining knowledge as already pointed out at least on 17/08/2016 i.e. the date on which MCRC Nos.10130/2016 and 10131/2016 were filed. Respondent/plaintiff was aware of the fact that cheques which have been issued by him have been used/misused by applicant/defendant.

16. Under these circumstances, this Court is of considered opinion that suit which has been filed by plaintiff/respondent in the month of August, 2022 is clearly barred by time. Thus, the Trial Court committed material illegality by rejecting the application filed by applicant/defendant under Order 7 Rule 11 of C.P.C. Accordingly, order dated 06/03/2025 passed by Twentieth Civil Judge, Junior Division, Gwalior in Regular Civil Suit No.781-A/2022 is hereby set aside. Application filed by applicant under Order 7 Rule 11 of C.P.C. is allowed and civil suit filed by respondent/plaintiff is hereby dismissed as barred by time.

17. Civil revision succeeds and is hereby **allowed**.

(G. S. AHLUWALIA)
JUDGE

PjS/-