

C.R. No.195/2015

08.11.2016

Shri Manohar Dalal, learned Counsel for the applicants.

Shri Vivek Phadke, learned Counsel for the respondents No. 1 to 4.

Shri R.S. Parmar, learned Public Prosecutor for the respondent No.5/State.

Heard finally at the motion stage.

ORDER

The revision petition has been filed against the order dated 08.04.2015 passed by Additional Judge the Court of First Additional District Judge, Neemuch in Civil Suit No.11-A/2014 by which the learned Judge has rejected the application filed by the applicants under order 7 Rule 11 CPC.

Learned counsel for the applicants/defendants submits that both the parties entered into an agreements dated 05.09.2003 and 17.04.2004 for sale the disputed property in consideration of Rs.31,51,000/-. A sum of Rs.5,00,000/- was paid in advance by defendants and it was agreed between them that the remaining amount shall be paid till 15.07.2004, after that the registered sale deed shall be executed but the non-applicants/plaintiff failed to comply the above condition of agreement. The non-applicants No.1 to 3/plaintiff had to file a suit for specific performance of the contract within three years from 17.04.2004 but they have filed the present suit on 25.09.2012, which is apparently barred by limitation, therefore, the applicants filed an application under Order 7 Rule 11 CPC for rejection of the plaint but the learned trial Court has wrongly dismissed the application.

The learned counsel for the respondents/plaintiff submitted that the trial Court has not committed any error of law in passing the impugned order and he prayed for dismissal of this revision.

From bare perusal of Clause-D of Rule 11 of order 7 CPC, which shows that for the purpose of invoking this clause, the suit must be barred any law, in view of the statement made by plaintiff himself in the plaint.

In the instant case, I am afraid that requirement of Clause-D of Rule 11 Order 7 CPC is not fully satisfied because the plaintiff has stated in the plaint that cause of action accrued to the plaintiff on 20.05.2009 when he paid the amount under the agreement and on 02.03.2010 when he sent the notice to the defendant for the specific performance of the contract, whether the statement is or is not correct does not arise for consideration at this stage. It is to say that above mentioned statement made by plaintiff in the plaint that the suit was within limitation as the cause of action accrued on 20.05.2009 and on 02.03.2010 does not attract the provisions of Clause-D Rule 11 of Order 7 CPC.

In the case of **Mohan Lal Sukadia University vs. Miss Priya Soloman** AIR 1999 Rajasthan 102 wherein the Rajasthan High Court observed in para 5 of judgment that:

5. "It is common knowledge that parties may take such interpretation of law as they may be advised and in matter relating to limitation, the plaintiff may assert that the period of limitation should be counted from a particular date. The defendant may or may not agree with such a view. If a controversy arises, the trial Court has to decide this controversy in accordance with law after hearing both the parties and taking such evidence regarding the disputed question of fact, as may be necessary. Such disputed questions cannot be decided at the time of considering an application filed under Order 7, Rule 11, C.P.C. In my considered opinion. Clause (d) of Rule 11 of Order 7, C.P.C. applies to those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in the force."

In the case of **Lukeshwar s/o Bhopalsingh vs. Dhebar Singh s/o Atmaram** 2000(3) M.P.L.J. 135 wherein this Court held as under:

17. "It is undisputed preposition of law that a plaint can be rejected only when on reading of the plain itself, either it does not disclose a cause of action or it appears to be barred by some law. The Courts are not entitled to travel beyond the pleadings of the plaint. If the defendants plead that the suit is barred by some law because of some additional factors pleaded by him, then he has to establish these factors."

In the case of **Popat and Kotecha Property vs. State Bank of India Staff Association** (2005) 7 SCC 510, the Hon'ble apex Court held thus:

10. "Clause (d) of Order 7 Rule 7 speaks of suit, as appear from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force."

The provisions of this rule came up for consideration before the Hon'ble apex Court in the case of **Ramesh B. Desai & Ors. v. Bipin Vadilal Mehta & Ors.** AIR 2006 SC 3672, wherein it was held thus:

16. "A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. A plea of limitation is a mixed question of law and fact. The question whether the words "barred by law" occurring in Order VII Rule 11(d) CPC would also include the ground that it is barred by law of limitation has been recently considered by a two Judge Bench of this Court to which one of us was a member (Ashok Bhan J.) in Civil Appeal No. 4539 of 2003 (Balasaria Construction Pvt. Ltd. vs. Hanuman Seva Trust and others) decided on 8.11.2005 and it was held: -

"After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the paint it cannot be held that the suit

is barred by time."

This principle would be equally applicable to a Company Petition. Therefore, unless it becomes apparent from the reading of the Company Petition that the same is barred by limitation the petition cannot be rejected under Order VII Rule 11(d) CPC. "

In view of above mentioned position of law as to interpretation of Clause-D Rule 11 Order 7 CPC, the impugned order dated 08.04.2015 passed by ADJ, Neemuch does not suffer from any legal infirmity. Nothing contending in this order shall preclude the defendants/applicants from raising the plea of limitation in the written statement that the suit is barred by limitation. The learned trial Court will have to decide the question of limitation accordance with the provisions of law without being prejudiced by the order of this Court. Accordingly, this revision is hereby dismissed.

**(S.K. AWASTHI)
JUDGE**