

A.F.R.
Neutral Citation No. - 2024:AHC:19812
Reserved on: 04.01.2024
Delivered on: 06.02.2024

Court No. - 52

Case :- WRIT - C No. - 35362 of 2023

Petitioner :- Saurabh Kalani

Respondent :- Stressed Asset Stabilisation Fund And 7 Others

Counsel for Petitioner :- Veerendra Kumar Shukla

Hon'ble Manish Kumar Nigam,J.

1. Heard learned counsel for the parties and perused the record.
2. This writ petition has been filed challenging the order dated 18.11.2022 passed in Original Application No. 729 of 2016 (Stressed Asset Stabilisation Fund Vs. M/s Gilt Pack Ltd. And others) by which, application of the petitioner under Order VII Rule 11 of C.P.C. has been rejected by the Debts Recovery Tribunal, Jabalpur (*hereinafter referred to as 'D.R.T. Jabalpur'*). The appellate order dated 3.1.2023 in Appeal No.1140 of 2022 (Saurabh Kalani Vs. Stressed Asset Stabilization Fund and others) passed by the Debts Recovery Appellate Tribunal, Allahabad (*hereinafter referred to as 'D.R.A.T., Allahabad'*) is also under challenge.
3. Brief facts of the case are that respondent No.1 - Stressed Asset Stabilisation Fund is the assignee of the original lender IDBI. IDBI granted the financial assistance to the tune of Rs. 7.60 crores to respondent No.2 – Gilt Pack Ltd. Company during the year 1994 -1996. Petitioner is the guarantor to the aforesaid financial assistance granted to the Company on the basis of Deed of Guarantee dated 24.3.1994, 16.11.1994 and 26.9.1996. The Original Application No.729 of 2016 has been filed by respondent No.1 before the D.R.T. Jabalpur in the year 2016. Petitioner has been arrayed as opposite party no. 3 in the aforesaid Original Application. Relief claimed in Original Application is that

defendants No.1 to 3 be ordered to pay the applicant a sum of Rs. 394,41,00,970/- towards the loan as on 1.7.2016 together with further interest thereon on contractual rates w.e.f. 1.7.2016 and for other reliefs. In the aforesaid proceedings, petitioner moved an application under Order VII Rule 11 of CPC on the ground that Original Application has been filed after a lapse of 19 years from the date of execution of Deed of Guarantee executed by the petitioner and the claim of respondent No.1 is barred by time and, therefore, the Original Application be rejected. Respondent No.1 contested the application and filed objection to the application filed by petitioner. The application of petitioner has been rejected by the D.R.T. Jabalpur by its order dated 18.10.2022. Against the order dated 18.11.2022, petitioner preferred an appeal being Appeal No.1140 of 2022 (Saurabh Kalani Vs. Stressed Asset Stabilization Fund and others) before the D.R.A.T. Allahabad. The D.R.A.T. Allahabad, by its order dated 3.1.2023, has disposed of the appeal permitting the appellant-petitioner to raise his contentions/grievances whatever he has, with regard to the maintainability of Original Application in view of limitation and if such an application is filed by the appellant-petitioner before the Tribunal below, the same shall be considered at the time of final hearing of the said Original Application and has refused to entertain the appeal as the matter is pending before the concerned Tribunal and all the issues are yet to be adjudicated on merits.

4. It has been contended by learned counsel for the petitioner that D.R.A.T. has though permitted the petitioner to raise his grievances as to the issue of maintainability of the Original Application on the ground of limitation and has also directed for consideration of same at the time of final hearing of Original Application but has not set aside the order passed by the DRT Jabalpur by which application filed by the petitioner under Order VII Rule 11 of CPC, has been rejected by the D.R.T. Jabalpur holding that Original Application is not barred by limitation. It has been further contended by learned counsel for the petitioner that

unless the order passed by Debts Recovery Tribunal is set aside holding that the Original Application is not barred by limitation, the same will operate as resjudicata when the matter will be considered by Debts Recovery Tribunal in pursuance to the directions given by the D.R.A.T. Contentions are also raised by learned counsel appearing for the petitioner on merits against the findings recorded by the D.R.T. Jabalpur while dismissing his application under Order VII Rule 11 CPC.

5. It will be useful to examine the provisions of Order VII Rule 11 CPC before considering the submissions made by learned counsel for the petitioner. Rule 11 of the Order VII CPC is quoted as under :-

*11. **Rejection of plaint** — The plaint shall be rejected in the following cases:—*

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate];

[(f) where the plaintiff fails to comply with the provisions of rule 9];

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”

6. In case of **T. Arivandandam vs. T.V. Satyapal; (1997) 4 SCC 467**: Apex Court has held that the provisions of Rule 11 are mandatory. If the plaint is found to be defective and the case is covered by Rule 11,

it goes to the root of the matter and the Court has no option and the plaintiff has to be rejected. An application by opposite party is not necessary.

7. From the reading of Clause 11 of Order 7 C.P.C., it is clear where the suit appears from the statements in the plaintiff to be barred by any law, the Court shall reject the plaintiff.

8. Indeed, Order VII Rule 11 CPC gives ample power to the Court to reject the plaintiff, if from the averments in the plaintiff, it is evident that the suit is barred by any law including the law of limitation, this position is no more *res integra*.

9. Order VII Rule 11(d) CPC provides that the plaintiff shall be rejected "where the suit appears from the statement made in the plaintiff to be barred by any law", hence, in order to decide whether the suit is barred by law, it is the statement in the plaintiff will have to be construed. The Court while deciding such an application under Order 7 Rule 11 C.P.C. must have due regard only to the statements made in the plaintiff. Whether the suit is barred by any law must be determined from the statements in the plaintiff and it is not open to decide the issue on the basis of any other material including the written statement in the case.

10. In **Saleem Bhai vs. State of Maharashtra; (2003) 1 SCC 557**, the Apex Court while considering Order VII Rule 11 of the Code held as under: (SCC 560, Para 9) :-

"A perusal of Order 7 Rule 11 CPC. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaintiff. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit-before registering the plaintiff 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 of Order 7 CPC the averments in the plaintiff are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage....."

11. In Kamala Vs. K.T. Eshwara; (2008) 12 SCC 661, S.B. Sinha, J speaking for the Bench examined the ambit of Order VII Rule 11(d) CPC and observed: (SCC 668-69, paras 21 and 22)

“21. Order 7, Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7, Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code is the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject matter of an order under the said provision.”

12. In case of Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal; (2017) 13 SCC 174: (2017) 5 SCC (Civ) 602; the Apex Court has summarized the legal position as follows :-

“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 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 of 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.”

13. Recently, the Apex Court in case of **Srihari Hanumandas Totala vs. Hemant Vithal Kamat and others; (2021) 9 SCC 99** has reiterated the same principle (paras 25, 25.1, 25.2 and 25.3), which are as follows :-

“25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows:

25.1 To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

25.2 The defense made by the defendant in the suit must not be considered while deciding the merits of the application;

14. In case of **Srihari Hanumandas Totala (Supra)**, the Apex Court was considering with an objection regarding bar of *res judicata* and not of limitation.

15. With the help of petitioner, I have perused the copy of Original Application which is filed at page 64 of the paper book from which it is clear that as per the averment made therein, Deed of Guarantee has been executed by the petitioner in the year 1994-96. Defendant - respondent No.2 (original borrower) filed a Reference before BIFR being Case No. 84 of 1997 and BIFR, vide its order dated 8.1.2007, passed final winding up order in relation to original borrower company. It has been

further stated in the Original Application that the original borrower has acknowledged the debt of applicant vide letter dated 18.3.2006 and has also submitted the letter dated April 1, 2006 for One Time Settlement Scheme. It has also been stated in the Original Application that to finalize the financial Assistance forming subject matter of the present Original Application, the same has been demanded by respondent No.1 from the defendant – respondent No.2 *vide* notice dated 17.10.2007 u/s 13(2) of the Securitisation and Reconstruction of Financial Assets And Enforcement Of Security Interest Act, 2002 and respondent no. 1 has also invoked the guarantee of the Guarantors *vide* letter dated 18.1.2016.

16. Question of limitation is generally a mixed question of law and fact. In case of **Ramesh B Desai and others vs. Vipin Vadilal Mehta and others; (2006) 5 SCC 638**; the Apex Court while dealing with the issue of limitation held that 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.

17. As the plea of limitation is generally a mixed question of law and fact. At this stage, it will be useful to refer the provisions of Order VII Rule 6 CPC which are quoted as under :-

“6. Grounds of exemption from limitation law – Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed.”

18. In view of Order VII Rule 6 CPC, plaintiff is entitled to claim exemption from the law of limitation on the grounds as set forth by him in his plaint claiming such exemption.

19. In case of **P.V. Guru Raj Reddy and Another Vs. P. Neeradha Reddy and others; (2015) 8 SCC 331**, the Apex Court held that rejection of the plaint under Order VII Rule 11 of CPC is a drastic power

conferred in the Court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII Rule 11 CPC, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII Rule 11 CPC, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. **It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law, the plaint can be rejected. In all other situations the claims will have to be adjudicated in the course of trial.**

20. In the present case, from reading of the Original Application as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do so it cannot be said that the said pleadings ex facie disclose that the suit is barred by limitation. So far as the contention raised by learned counsel for the petitioner that the Original Application itself was filed after a lapse of more than 16 years and the petitioner never acknowledged the claim of respondent No.1 during this period and also other submissions made by the petitioner cannot be looked into at the stage of considering the provisions of Order VII Rule 11(d) of CPC.

21. So far as contention of learned counsel for the petitioner that the Courts below have erred in law in rejecting the application of the petitioner under VII Rule 11 CPC as the Original Application was filed much beyond the time prescribed by the Limitation Act and coupled with the fact that petitioner never acknowledged the debt during this period cannot be sustained for the reason that in view of the law laid down by the Apex Court, as discussed above, at the stage of considering the application under Order VII Rule 11 CPC, it is only the plaint allegation has to be seen and not the defence which is being taken by the defendant

either in his written statement or in his application under Order VII Rule 11 can be considered. From the perusal of the Original Application it cannot be said that as per the allegations contained in the Original Application, the Original Application is barred by time. So far as contentions of the petitioner on merit otherwise are based on the pleadings in his written statement can be considered only after framing of an issue as to limitation and after considering the evidence of both the parties and not at the stage of deciding the application under Order VII Rule 11 CPC.

22. Further contention of learned counsel for the petitioner that though the D.R.A.T. while deciding the appeal has permitted the petitioner to move an application as to his grievance relating to limitation and in case such application is moved, the same shall be considered by the Tribunal at the time of decision of the Original Application is concerned is of no consequence as the order passed by the D.R.T. rejecting the application filed by the petitioner under Order VII Rule 11 CPC has held therein that the Original Application is not barred by limitation, has not been set aside by the D.R.A.T. and the same will operate as res judicata at the time when the issue of limitation will be considered as per the directions of the D.R.A.T. Contention of the learned counsel for the petitioner, is also misconceived, for the reason that at the time of consideration of application under Order VII Rule 11 CPC, the Tribunal has to confine itself only to the averments made in the Original Application and at that stage, the Tribunal cannot look into any other material. While considering the issue of limitation, as directed by the D.R.A.T., the Tribunal has to examine the pleadings of both the parties as well as the evidence led in support of their cases by both the parties and in my view any finding recorded by the D.R.T. while deciding the application under Order VII Rule 11 will not operate as res judicata while deciding the issue of limitation after exchange of pleadings and after the parties led their evidence.

23. Even otherwise, in view of Section 3(1) of the Indian Limitation Act, it is the duty of the Court or Tribunal to consider the issue of limitation of its own even though the issue of limitation has not been raised by either of the parties. In this regard, Section 3 of the Indian Limitation Act is quoted as under :-

“3. Bar of limitation.— (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2)”

24. The Apex Court in case of **Union of India and another v. British India Corporation Ltd. and others** reported in (2003) 9 SCC 505, in paragraph no. 7 has held as under:

“7. As to the first point, the question of limitation is a mandate to the forum and, irrespective of the fact whether it was raised or not, the forum must consider and apply it, if there is no dispute on facts.

25. In case of **Gannmani Anasuya and others v. Parvatini Amarendra Chowdhary and others** reported in (2007) 10 SCC 296, the Apex Court in paragraph no. 27 has held as under:

“27. In terms of Section 3 of the Limitation Act, it is for the court to determine the question as to whether the suit is barred by limitation or not irrespective of the fact that as to whether such a plea has been raised by the parties. Such a jurisdictional fact need not, thus, be pleaded.”

26. Similarly, in case of **Noharlal Verma v. District Cooperative Central Bank Limited, Jagdalpur** reported in (2008) 14 SCC 445, the Apex Court reiterated the view in paragraph no. 32 & 33 as under:

“32. Now, limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a Court or an Adjudicating Authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.

33. Sub-section (1) of Section 3 of the Limitation Act, 1963 reads as under;

(3) Bar of limitation.--(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

(emphasis supplied)

Bare reading of the aforesaid provision leaves no room for doubt that if a suit is instituted, appeal is preferred or application is made after the prescribed period, it has to be dismissed even though no such plea has been raised or defence has been set up. In other words, even in absence of such plea by the defendant, respondent or opponent, the Court or Authority must dismiss such suit, appeal or application, if it is satisfied that the suit, appeal or application is barred by limitation.”

27. The issue of limitation being generally a mixed issue of fact and law and is subject to the evidence led by the parties. The findings recorded by the Court/Tribunal while deciding the application under Order 7 Rule 11 C.P.C. will not operate as res judicata.

28. I am of the considered opinion that the judgment of the Appellate Court is perfectly correct as it takes care of the petitioner's concern as to bar of limitation to maintainability of the Original Application.

29. In view of the same, I am not inclined to interfere with the matter. Accordingly, the petition is **disposed of** with the direction to D.R.T. Jabalpur to comply with the directions issued by the D.R.A.T. Allahabad *vide* its order dated 3.1.2023 passed in Appeal No.1140 of 2022 (Saurabh Kalani Vs. Stressed Asset Stabilization Fund and others.

Order Date :- 06.02.2024
Rishabh/Ved Prakash

(Manish Kumar Nigam, J.)